

## 71 Am. Jur. 2d State and Local Taxation Two VI A Refs.

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

##### A. Nature and Incidents in General

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 4143

West's Key Number Digest, [Taxation](#) 🔑 2003, 2005, 2013, 2063, 2068, 2073, 2074, 2699(7), 2704

### A.L.R. Library

A.L.R. Index, Taxes

West's A.L.R. Digest, Constitutional Law 🔑 4143

West's A.L.R. Digest, [Taxation](#) 🔑 2003, 2005, 2013, 2063, 2068, 2073, 2074, 2699(7), 2704

### Trial Strategy

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property](#), 28 Am. Jur. Proof of Facts 3d 439

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## 71 Am. Jur. 2d State and Local Taxation § 56

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

##### A. Nature and Incidents in General

## § 56. Generally

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2003, 2005, 2063

Taxes are imposed by the State in the exercise of its sovereign power,<sup>1</sup> and indeed, the power to tax is inherent in the sovereignty of the State.<sup>2</sup> A city<sup>3</sup> or State may impose a tax only if the tax is expressly authorized by law<sup>4</sup> though states simultaneously have a wide latitude to establish taxation schemes.<sup>5</sup>

The power of taxation is possessed by the government without being expressly conferred by the people.<sup>6</sup> Although the power to tax is an inherent power of government, the imposition, assessment, and collection of taxes is a process that is dictated entirely by statute.<sup>7</sup> Because the legislature must expressly authorize a tax, the existence of a tax cannot be inferred<sup>8</sup> or implied.<sup>9</sup> Only duly elected government officials of a state, county, or municipality can authorize taxation for the public as a whole.<sup>10</sup> Neither an administrative body<sup>11</sup> nor the executive branch,<sup>12</sup> including a state's department of revenue,<sup>13</sup> has the power to impose, expand, or levy a new tax.<sup>14</sup>

Since the power to tax is a traditional state power, unambiguous evidence is required to raise the inference that the scope of federal pre-emption of such power extends beyond that which clearly is mandated by Congress's language.<sup>15</sup>

### Observation:

The State has the power to tax separate from that of the federal government, and therefore, the State's tax power cannot be limited by federal statutes or regulations.<sup>16</sup>

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Footnotes

- <sup>1</sup> [Sarpy County Farm Bureau v. Learning Community of Douglas and Sarpy Counties](#), 283 Neb. 212, 808 N.W.2d 598 (2012); [Ignatz v. Com.](#), 849 A.2d 308 (Pa. Commw. Ct. 2004); [City of Richmond v. SunTrust Bank](#), 722 S.E.2d 268 (Va. 2012).
- <sup>2</sup> [Wells Fargo Bank, Minnesota, N.A. v. Com., Finance and Admin., Dept. of Revenue](#), 345 S.W.3d 800 (Ky. 2011), as corrected, (Aug. 25, 2011); [Powder River County v. State](#), 2002 MT 259, 312 Mont. 198, 60 P.3d 357 (2002).
- <sup>3</sup> [City of Richmond v. SunTrust Bank](#), 722 S.E.2d 268 (Va. 2012).
- <sup>4</sup> [Tyson Foods, Inc. v. Department of Treasury](#), 276 Mich. App. 678, 741 N.W.2d 579 (2007).
- <sup>5</sup> [Mayo Collaborative Services, Inc. v. Commissioner of Revenue](#), 698 N.W.2d 408 (Minn. 2005), as amended on denial of reh'g, (July 29, 2005); [Horizon Blue Cross Blue Shield of New Jersey v. State](#), 2012 WL 715965 (N.J. Super. Ct. App. Div. 2012).
- <sup>6</sup> [Dobbs v. Shelby County Economic and Industrial Development Authority](#), 749 So. 2d 425 (Ala. 1999).
- <sup>7</sup> [Seafirst Corp. v. Arizona Dept. of Revenue](#), 172 Ariz. 54, 833 P.2d 725 (Tax Ct. 1992); [Application of Kaul](#), 261 Kan. 755, 933 P.2d 717 (1997).
- <sup>8</sup> [Houghton Lake Area Tourism & Convention Bureau v. Wood](#), 255 Mich. App. 127, 662 N.W.2d 758 (2003).
- <sup>9</sup> [South Street Nominee Trust v. Board of Assessors of Carlisle](#), 70 Mass. App. Ct. 853, 878 N.E.2d 931 (2007).
- <sup>10</sup> [Wise County Bd. of Sup'rs v. Wilson](#), 250 Va. 482, 463 S.E.2d 650 (1995).
- <sup>11</sup> [Lansing Mercy Ambulance Service v. Tri-County Emergency Medical Control Authority, Inc.](#), 893 F. Supp. 1337 (W.D. Mich. 1995).
- <sup>12</sup> [Hawaii Insurers Council v. Lingle](#), 120 Haw. 51, 201 P.3d 564 (2008); [Praxair Technology, Inc. v. Director, Div. of Taxation](#), 201 N.J. 126, 988 A.2d 92 (2009).
- <sup>13</sup> [UTELCOM, Inc. v. Bridges](#), 77 So. 3d 39 (La. Ct. App. 1st Cir. 2011).
- <sup>14</sup> [Lansing Mercy Ambulance Service v. Tri-County Emergency Medical Control Authority, Inc.](#), 893 F. Supp. 1337 (W.D. Mich. 1995).
- <sup>15</sup> [Disney Enterprises, Inc. v. Tax Appeals Tribunal of State](#), 10 N.Y.3d 392, 859 N.Y.S.2d 87, 888 N.E.2d 1029 (2008).
- <sup>16</sup> [Plasse v. Commissioner of Revenue Services](#), 49 Conn. Supp. 38, 858 A.2d 919 (Super. Ct. 2003), judgment aff'd, 85 Conn. App. 542, 858 A.2d 278 (2004).

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## 71 Am. Jur. 2d State and Local Taxation § 57

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

##### A. Nature and Incidents in General

## § 57. Legislative powers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2013, 2073, 2074

### Trial Strategy

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property, 28 Am. Jur. Proof of Facts 3d 439](#)

Taxation power is exerted through the legislature.<sup>1</sup> Legislative enactments and local laws are presumptively valid; this presumption is especially strong in the area of taxation where special deference is given to legislative policy choices.<sup>2</sup>

The power to tax is exclusively a function of the legislature<sup>3</sup> that can be exercised only under statutory authority and in the manner provided by law.<sup>4</sup> Subject only to constitutional restrictions<sup>5</sup> and the will of the people expressed through elections,<sup>6</sup> the legislature's powers and discretion in regard to taxation are broad or wide,<sup>7</sup> sometimes said to be unlimited<sup>8</sup> or plenary,<sup>9</sup> except as restricted by constitutional provisions, and supreme.<sup>10</sup> The power to tax includes the power to say who will be taxed and who will pay it.<sup>11</sup> The legislature also has the power to enact reasonable procedural regulations to facilitate the orderly collection of taxes.<sup>12</sup> The legislative body must express its intention to tax in distinct and unambiguous language.<sup>13</sup> The legislative imposition of a tax becomes unlawful when done to accomplish an unlawful end.<sup>14</sup>

### Observation:

The legislative power to raise funds is not limited to the imposition of taxes; it includes the power to impose fees necessary to

offset the costs of using state government services.<sup>15</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Municipality's taxing power is limited to that taxing power given to the municipality by the legislature. [Bremer, LLC v. East Greenacres Irrigation Dist.](#), 316 P.3d 652 (Idaho 2013).

As a general rule, the state legislature possesses plenary power to tax except as limited by the state constitution. [In re Estate of Hambleton](#), 335 P.3d 398 (Wash. 2014).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [State ex rel. Oklahoma Tax Com'n v. Texaco Exploration & Production, Inc.](#), 2005 OK 52, 131 P.3d 705 (Okla. 2005); [City of Richmond v. SunTrust Bank](#), 722 S.E.2d 268 (Va. 2012).
- <sup>2</sup> [Terminello v. Village of Piermont](#), 92 A.D.3d 673, 938 N.Y.S.2d 162 (2d Dep't 2012).
- <sup>3</sup> [Department of Local Government Finance v. Griffin](#), 784 N.E.2d 448 (Ind. 2003); [Southeastern Pennsylvania Transp. Authority v. Board of Revision of Taxes](#), 574 Pa. 707, 833 A.2d 710 (2003).
- <sup>4</sup> [Dobbs v. Shelby County Economic and Industrial Development Authority](#), 749 So. 2d 425 (Ala. 1999).
- <sup>5</sup> § 67.
- <sup>6</sup> [Greater Poughkeepsie Library Dist. v. Town of Poughkeepsie](#), 81 N.Y.2d 574, 601 N.Y.S.2d 94, 618 N.E.2d 127 (1993); [EOG Resources Marketing, Inc. v. Oklahoma State Bd. of Equalization](#), 2008 OK 95, 196 P.3d 511 (Okla. 2008), as corrected, (Oct. 24, 2008).
- <sup>7</sup> [Mesa County Bd. of County Com'rs v. State](#), 203 P.3d 519, 242 Ed. Law Rep. 448 (Colo. 2009); [In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38](#), 490 Mich. 295, 806 N.W.2d 683 (2011); [New Providence Apartments Co., L.L.C. v. Mayor and Council of Borough of New Providence](#), 423 N.J. Super. 210, 31 A.3d 958 (App. Div. 2011); [Marshall v. Com.](#), 2012 WL 8704 (Pa. Commw. Ct. 2012).
- <sup>8</sup> [Wells Fargo Bank, Minnesota, N.A. v. Com., Finance and Admin., Dept. of Revenue](#), 345 S.W.3d 800 (Ky. 2011), as corrected, (Aug. 25, 2011); [Ocean Energy, Inc. v. Plaquemines Parish Government](#), 880 So. 2d 1 (La. 2004).
- <sup>9</sup> [Mesa County Bd. of County Com'rs v. State](#), 203 P.3d 519, 242 Ed. Law Rep. 448 (Colo. 2009); [EOG Resources Marketing, Inc. v. Oklahoma State Bd. of Equalization](#), 2008 OK 95, 196 P.3d 511 (Okla. 2008), as corrected, (Oct. 24, 2008); [Maury County ex rel. Maury Regional Hosp. v. Tennessee State Bd. of Equalization](#), 117 S.W.3d 779 (Tenn. Ct. App. 2003); [Washington Off-Highway Vehicle Alliance v. State](#), 163 Wash. App. 722, 260 P.3d 956 (Div. 2 2011), review granted, 173 Wash. 2d 1013 (2012).
- <sup>10</sup> [Abbott Laboratories v. Franchise Tax Bd.](#), 175 Cal. App. 4th 1346, 96 Cal. Rptr. 3d 864 (2d Dist. 2009), as modified,

(Aug. 6, 2009).

- <sup>11</sup> [Rocky Mountain Oil and Gas Ass'n v. State Bd. of Equalization](#), 749 P.2d 221 (Wyo. 1987).
- <sup>12</sup> [Hewlett-Packard Co. v. County of Santa Clara](#), 50 Cal. App. 3d 74, 123 Cal. Rptr. 195 (1st Dist. 1975).
- <sup>13</sup> [Florida S & L Services, Inc. v. Department of Revenue](#), 443 So. 2d 120 (Fla. Dist. Ct. App. 1st Dist. 1983).
- <sup>14</sup> [Wilson Partners, L.P. v. Com., Bd. of Finance and Revenue](#), 558 Pa. 462, 737 A.2d 1215 (1999).
- <sup>15</sup> [Graham v. Haridopolos](#), 75 So. 3d 315, 274 Ed. Law Rep. 738 (Fla. Dist. Ct. App. 1st Dist. 2011), review granted, 2012 WL 860551 (Fla. 2012).

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## 71 Am. Jur. 2d State and Local Taxation § 58

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

##### A. Nature and Incidents in General

## § 58. Territorial limitations of power

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 4143

West's Key Number Digest, [Taxation](#) 🔑 2068

### A.L.R. Library

[Construction and Application of State Prohibitions of Unfunded Mandates, 76 A.L.R.6th 543](#)

The right of a State to tax realty depends primarily upon its territorial jurisdiction over the area.<sup>1</sup> Under the 14th Amendment to the Federal Constitution, any attempt by a State to tax property or privileges which are not within its jurisdiction amounts to a deprivation by that State of the property of the taxpayer without due process of law.<sup>2</sup> The constitutional provision allowing taxation on property owned or used within the territorial limits of a tax-levying entity describes a jurisdictional threshold mandated by due process and fundamental fairness and assures that taxes are not levied arbitrarily against persons or property having no substantial contact with the levying entity.<sup>3</sup> To impose a tax, a State must have jurisdiction over the thing taxed.<sup>4</sup> It is essential to the validity of an ad valorem tax that the property be within the territorial jurisdiction of the taxing power.<sup>5</sup> A State is prohibited by the Due Process and Commerce Clauses from imposing an income-based tax on income earned outside its borders.<sup>6</sup> However, the taxing power of a State may extend to objects of taxation beyond its borders and to intangible property of nonresidents if the property is derived from, or is used as an incident of, property owned, or a business conducted, by such nonresident within the state,<sup>7</sup> including income received as a salary from the federal government.<sup>8</sup> A State possesses the power to impose a tax upon an out-of-state entity only when there is a nexus between the taxing state and the taxpayer, but there can be sufficient contacts between the taxing state and the person or transaction to be taxed to satisfy due process even though the transaction does not physically transpire within the state's borders, or the person is not physically present there.<sup>9</sup> The out-of-state cohabitation of a nonresident spouse of a nonresident taxpayer fails to

constitute the necessary minimum connection to support an extraterritorial exercise of the State's taxing power even if such spouses file a joint federal tax return.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The Due Process Clause of the Fourteenth Amendment allows a State to tax all the income of its residents, even income earned outside the taxing jurisdiction. [U.S.C.A. Const.Amend. 14. Comptroller of Treasury of Maryland v. Wynne, 135 S. Ct. 1787 \(2015\).](#)

The test for internal consistency of an income tax scheme, so as to comply with the Due Process and Interstate Commerce Clauses of the federal constitution, posits a situation in which every jurisdiction applies the tax at issue; the test then determines whether under such circumstances more than 100% of the taxpayer's income would be subject to taxation. [U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 14. Tesoro Corp. v. State, Dept. of Revenue, 312 P.3d 830 \(Alaska 2013\).](#)

Under both the Due Process and Commerce clauses of the federal Constitution, a state is prohibited from imposing income tax on value earned outside the state's borders. [U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const.Amend. 5, 14. Winget v. Dept. of Treasury \(On Rem\), 304 Mich. App. 542, 847 N.W.2d 653 \(2013\), appeal denied, 847 N.W.2d 507 \(Mich. 2014\).](#)

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [S. R. A., Inc. v. State of Minn., 327 U.S. 558, 66 S. Ct. 749, 90 L. Ed. 851 \(1946\).](#)
- <sup>2</sup> [American Oil Co. v. Neill, 380 U.S. 451, 85 S. Ct. 1130, 14 L. Ed. 2d 1 \(1965\).](#)
- <sup>3</sup> [Salt Lake City Corp. v. Property Tax Div. of Utah State Tax Com'n, 1999 UT 41, 979 P.2d 346 \(Utah 1999\).](#)
- <sup>4</sup> [Matter of Estate of Parsons, 119 Wis. 2d 340, 350 N.W.2d 722 \(Ct. App. 1984\), opinion aff'd, 122 Wis. 2d 186, 361 N.W.2d 687 \(1985\).](#)
- <sup>5</sup> [Big Horn County Elec. Co-op., Inc. v. Adams, 219 F.3d 944 \(9th Cir. 2000\).](#)
- <sup>6</sup> [Surtees v. VFJ Ventures, Inc., 8 So. 3d 950 \(Ala. Civ. App. 2008\), aff'd, 8 So. 3d 983 \(Ala. 2008\); Dow Chemical Co. v. Department of Revenue, 359 Ill. App. 3d 1, 295 Ill. Dec. 133, 832 N.E.2d 284 \(1st Dist. 2005\); Irving Pulp & Paper, Ltd. v. State Tax Assessor, 2005 ME 96, 879 A.2d 15 \(Me. 2005\); Whirlpool Properties, Inc. v. Director, Div. of Taxation, 208 N.J. 141, 26 A.3d 446 \(2011\).](#)
- <sup>7</sup> [Columbia Bank for Cooperatives v. Blackmon, 232 Ga. 344, 206 S.E.2d 424 \(1974\).](#)
- <sup>8</sup> [Comptroller of Treasury v. Lenderking, 268 Md. 613, 303 A.2d 402 \(1973\).](#)
- <sup>9</sup> [Adventure Communications, Inc. v. Kentucky Registry of Election Finance, 191 F.3d 429 \(4th Cir. 1999\).](#)
- <sup>10</sup> [Brady v. State, 172 A.D.2d 17, 576 N.Y.S.2d 896 \(3d Dep't 1991\), order aff'd, 80 N.Y.2d 596, 592 N.Y.S.2d 955, 607 N.E.2d 1060 \(1992\).](#)



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## 71 Am. Jur. 2d State and Local Taxation § 59

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon


#### VI. In General

##### A. Nature and Incidents in General

## § 59. Police power distinguished

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2013, 2073

The distinction between the power of taxation and the police power is that the taxing power is exercised for the purpose of raising revenue and is subject to certain designated constitutional limitations while the police power is exercised for the promotion of the public welfare by means of the regulation of dangerous or potentially dangerous activities.<sup>1</sup> A legislative enactment designed solely or chiefly to produce revenue is an exercise of the taxing power and cannot be justified as a valid exercise of the police power.<sup>2</sup>

Assessments collected by a city under its police power, rather than under its taxing power, remain subject to fairness and due process protections.<sup>3</sup>

A single statute may include the exercise of both the police power and the power to tax<sup>4</sup> so long as the legislature legally enacts it in the exercise of either power.<sup>5</sup>

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#### Footnotes

<sup>1</sup> State v. Gowdy, 62 Mont. 119, 203 P. 1115 (1922); Robinson v. City of Norfolk, 108 Va. 14, 60 S.E. 762 (1908).

<sup>2</sup> State v. McFall, 112 Or. 183, 229 P. 79 (1924); Com. v. Smallhoover, 389 Pa. Super. 575, 567 A.2d 1055 (1989); State v. Anderson, 144 Tenn. 564, 234 S.W. 768, 19 A.L.R. 180 (1920).

<sup>3</sup> American Bank of St. Paul v. City of Minneapolis, 802 N.W.2d 781 (Minn. Ct. App. 2011).

<sup>4</sup> Crocker v. Finley, 99 Ill. 2d 444, 77 Ill. Dec. 97, 459 N.E.2d 1346 (1984).

<sup>5</sup> [In re Kalana, 22 Haw. 96, 1914 WL 1717 \(1914\).](#)

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## 71 Am. Jur. 2d State and Local Taxation § 60

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

##### A. Nature and Incidents in General

## § 60. Judicial functions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2699(7), 2704

### A.L.R. Library

[Constitutionality, construction, and application of state and local public-utility-gross-receipts-tax statutes—modern cases, 58 A.L.R.5th 187](#)

The courts are not free to add limitations on the legislature's authority regarding taxation and revenue that are not enumerated in the state constitution or the Federal Constitution.<sup>1</sup> Moreover, taxation of property is not a judicial function, but a legislative one, and courts may not review assessments of property upon which taxes are based unless such assessments are fraudulent<sup>2</sup> or are so oppressive, arbitrary, or capricious as to amount to fraud.<sup>3</sup> Indeed, the exercise of a state legislature's discretion in deciding what subjects it shall select for taxation is not subject to the approval of the judicial department of the state.<sup>4</sup> Statutes that give a court discretion in determining the method to assess and levy taxes constitute an unconstitutional delegation of legislative taxing power in violation of the separation of powers provisions of the Federal Constitution.<sup>5</sup> Similarly, a court may not impose a tax when fashioning a remedy.<sup>6</sup> Thus, courts may not affirm or overturn a valid tax regulation or decision merely on the basis of their agreement or disagreement with its policy implications even when important issues of taxation are at stake.<sup>7</sup> Courts will not engage in conjecture as to whether the means exist by which the legislature might better or more fairly accomplish its end of raising revenue.<sup>8</sup> A court may inquire into the method of taxation but must leave the measure of a revenue-raising tax entirely up to the legislature, and it will not invalidate a legally imposed revenue-raising tax simply because it is excessive.<sup>9</sup>

Footnotes

- <sup>1</sup> School Dist. of Kansas City v. State, 317 S.W.3d 599, 259 Ed. Law Rep. 930 (Mo. 2010).
- <sup>2</sup> Dakota Northwestern Associates Ltd. Partnership v. Burleigh County Bd. of County Com'rs, 2000 ND 164, 616 N.W.2d 349 (N.D. 2000).
- <sup>3</sup> Gorges Chrysler-Plymouth, Inc. v. Cobler, 212 Kan. 664, 512 P.2d 504 (1973).
- <sup>4</sup> Deadwood, Inc. v. North Carolina Dept. of Revenue, 356 N.C. 407, 572 S.E.2d 103 (2002).
- <sup>5</sup> Robert D. Holloway, Inc. v. Pine Ridge Addition Residential Property Owners, 332 Ark. 450, 966 S.W.2d 241 (1998).
- <sup>6</sup> Missouri v. Jenkins, 495 U.S. 33, 110 S. Ct. 1651, 109 L. Ed. 2d 31, 59 Ed. Law Rep. 298 (1990).
- <sup>7</sup> Appalachian Power Co. v. State Tax Dept. of West Virginia, 195 W. Va. 573, 466 S.E.2d 424 (1995).
- <sup>8</sup> People Against Section 561.501, Inc. v. Department of Business Regulation, Div. of Alcoholic Beverages and Tobacco, 587 So. 2d 644 (Fla. Dist. Ct. App. 1st Dist. 1991).
- <sup>9</sup> Tanque Verde Enterprises v. City of Tucson, 142 Ariz. 536, 691 P.2d 302 (1984).

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

#### B. Limitations on Taxing Power

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2005](#), [2008](#), [2019](#), [2020](#), [2067](#), [2068](#), [2080](#), [2100](#), [2285](#), [2286](#), [2300](#)

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West's A.L.R. Digest, [Taxation](#)  [2005](#), [2008](#), [2019](#), [2020](#), [2067](#), [2068](#), [2080](#), [2100](#), [2285](#), [2286](#), [2300](#)

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## 71 Am. Jur. 2d State and Local Taxation § 61

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

#### B. Limitations on Taxing Power

##### 1. In General

## § 61. Relinquishment of taxing power

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2019

State constitutional provisions providing that the power of taxation may never be “surrendered, suspended, or contracted away” prohibit the legislature and state agencies from alienating the legislature’s fundamental power to tax.<sup>1</sup>

The taxing power of the State is never presumed to have been relinquished<sup>2</sup> unless the language in which the surrender is made is clear and unmistakable.<sup>3</sup> The sovereign power to tax may be abrogated by contract only if it has been specifically surrendered in terms which admit of no other reasonable interpretation.<sup>4</sup> The abandonment of such power must be proved by the party asserting the exemption,<sup>5</sup> and every reasonable doubt should be resolved against such restraint.<sup>6</sup> Where it exists, it is to be rigidly scrutinized and never permitted to extend, either in scope or duration, beyond what the terms of concession clearly imply.<sup>7</sup>

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#### Footnotes

<sup>1</sup> [Valencia Energy Co. v. Arizona Dept. of Revenue](#), 191 Ariz. 565, 959 P.2d 1256 (1998).

<sup>2</sup> [Weaver v. Prince George’s County](#), 281 Md. 349, 379 A.2d 399 (1977).

<sup>3</sup> [Coso Energy Developers v. County of Inyo](#), 122 Cal. App. 4th 1512, 19 Cal. Rptr. 3d 669 (4th Dist. 2004).

<sup>4</sup> [Merrion v. Jicarilla Apache Tribe](#), 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

<sup>5</sup> [Weaver v. Prince George's County, 281 Md. 349, 379 A.2d 399 \(1977\).](#)

<sup>6</sup> [Denver Center for the Performing Arts v. Briggs, 696 P.2d 299 \(Colo. 1985\).](#)

<sup>7</sup> [Denver Center for the Performing Arts v. Briggs, 696 P.2d 299 \(Colo. 1985\).](#)

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## 71 Am. Jur. 2d State and Local Taxation § 62

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

#### B. Limitations on Taxing Power

##### 1. In General

## § 62. Taxation without representation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2100

A state constitutional prohibition against taxation without representation is violated when the taxing power is delegated to a body composed of persons neither assented to by the people nor subject to the supervisory control of a body chosen by the people.<sup>1</sup> Thus, a board composed of persons appointed by a governor upon recommendation of a county legislative delegation cannot levy taxes without violating a state constitutional provision against taxation without representation.<sup>2</sup> However, allowing a city school committee consisting of appointed members to execute a binding collective bargaining agreement with city educational directors consisting of an unincorporated association of five school department employees does not result in taxation without representation where the city council retains the authority to set the total annual appropriation for the schools and to allocate funds among items other than collective bargaining agreements.<sup>3</sup>

In some states, there is no constitutional prohibition against taxation without representation.<sup>4</sup>

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#### Footnotes

<sup>1</sup> [Weaver v. Recreation Dist.](#), 328 S.C. 83, 492 S.E.2d 79 (1997).  
As to delegation of the taxing power, see §§ 95 to 100.

<sup>2</sup> [Hagley Homeowners Ass'n, Inc. v. Hagley Water, Sewer, and Fire Authority](#), 326 S.C. 67, 485 S.E.2d 92 (1997).

<sup>3</sup> [City of Lewiston v. Lewiston Educational Directors](#), 503 A.2d 210 (Me. 1985).

<sup>4</sup> [Borough of Rocky Hill v. State, 420 N.J. Super. 365, 21 A.3d 657, 268 Ed. Law Rep. 911 \(Ch. Div. 2010\).](#)

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## 71 Am. Jur. 2d State and Local Taxation § 63

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

#### B. Limitations on Taxing Power

#### 1. In General

## § 63. Estoppel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2020, 2080

There is a split of authority on the issue of whether a State may be estopped to collect taxes. In some jurisdictions, estoppel does not apply to the state as to taxing statutes.<sup>1</sup> Such states view the application of principles of estoppel as particularly inappropriate where the collection of taxes by a public body is involved.<sup>2</sup> Thus, the mere fact that a taxation law has not been fully enforced against others does not give a defendant the right to violate it.<sup>3</sup> Moreover, in states where the doctrine is inapplicable, taxpayers have no vested right to rely upon an erroneous interpretation of a statute exempting them from taxation even where the taxpayer has been advised that he or she is not responsible for a tax.<sup>4</sup> In other jurisdictions, however, estoppel may apply in tax cases when there is proof positive that the collector has misinformed the taxpayer, and the taxpayer has a particularly valid reason for relying on the misinformation and shows that it would be highly inequitable to compel the taxpayer to conform to the true requirement.<sup>5</sup> Estoppel against a tax collector or assessor applies only upon proof of misinformation given by the official upon which a taxpayer has a valid reason to rely,<sup>6</sup> such as where there is clear proof of an error in a printed tax exemption form or a continuing, misleading course of conduct, admitted by an agent of the county assessor who is brought into court and subjected to examination.<sup>7</sup>

### Caution:

Even in states that apply estoppel to taxation matters, the government will not be estopped where the taxpayer acted without due care in making an important election under which he or she is bound.<sup>8</sup>

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Footnotes

- <sup>1</sup> H. C. Albring Co. v. Kosydar, 46 Ohio St. 2d 343, 75 Ohio Op. 2d 401, 348 N.E.2d 703 (1976).
- <sup>2</sup> New Jersey Turnpike Authority v. Washington Tp., 137 N.J. Super. 543, 350 A.2d 69 (App. Div. 1975), judgment aff'd, 73 N.J. 180, 373 A.2d 652 (1977).
- <sup>3</sup> Essex County Bd. of Taxation v. Township of Caldwell, 21 N.J. Tax 188, 2003 WL 23109156 (Super. Ct. App. Div. 2003).
- <sup>4</sup> Illinois Power Co. v. Mahin, 49 Ill. App. 3d 713, 7 Ill. Dec. 436, 364 N.E.2d 597 (4th Dist. 1977), judgment aff'd, 72 Ill. 2d 189, 21 Ill. Dec. 144, 381 N.E.2d 222 (1978).
- <sup>5</sup> Pacific Conference v. Department of Revenue, 7 Or. Tax 429, 1978 WL 1541 (1978).
- <sup>6</sup> Clendenin v. Department of Revenue, 7 Or. Tax 62, 1977 WL 1598 (1977).
- <sup>7</sup> Pacific Conference v. Department of Revenue, 7 Or. Tax 429, 1978 WL 1541 (1978).
- <sup>8</sup> Ilana Realty, Inc. v. Village of Haverstraw, 163 A.D.2d 356, 558 N.Y.S.2d 566 (2d Dep't 1990).

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## 71 Am. Jur. 2d State and Local Taxation § 64

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

#### B. Limitations on Taxing Power

##### 1. In General

## § 64. Exemptions; immunities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2005, 2285, 2286, 2300

It is inherent in the exercise of the power to tax that a State be free to grant exemptions.<sup>1</sup> The power to exempt from taxation lies with the legislature.<sup>2</sup> The legislature has the general power to confer tax exemptions in addition to those prescribed by the constitution, or legislate exemptions that are broader in scope than those in the constitution, unless it is constitutionally prohibited from doing so.<sup>3</sup> However, the legislature lacks the authority to grant an exemption from taxes where it has no constitutional basis.<sup>4</sup>

A “tax immunity” is distinct from a “tax exemption”<sup>5</sup> in that an exemption from taxation presupposes the existence of a power to tax whereas immunity connotes the absence of that power.<sup>6</sup> As otherwise stated, a “tax exemption” exists where the legislature, in a constitutionally authorized manner, acts affirmatively to remove property otherwise subject to taxation whereas a “tax immunity” exists because the legislature never delegated to the taxing body any specific power to tax a particular class of property.<sup>7</sup>

Exemptions are constitutional if they are supported by just reasons and thereby reasonably promote some proper object of public welfare or interest.<sup>8</sup>

The legislature is constitutionally prohibited from delegating to a taxing authority the discretion to apply statutory tax exemptions.<sup>9</sup> Exemption statutes are to be strictly construed<sup>10</sup> in favor of imposing the tax and against allowing the exemption<sup>11</sup> but also reasonably construed.<sup>12</sup> To waive immunity from taxation, a statute must be clear and unambiguous.<sup>13</sup>

Changes in statutory exemptions must be accomplished by legislative action, not administrative pronouncement.<sup>14</sup> In some jurisdictions, the legislature may not broaden or add to the property tax exemptions allowed by the state constitution.<sup>15</sup>

Footnotes

- <sup>1</sup> Morning Star Co. v. Board of Equalization, 201 Cal. App. 4th 737, 135 Cal. Rptr. 3d 457 (3d Dist. 2011), review denied, (Mar. 21, 2012); Horizon Blue Cross Blue Shield of New Jersey v. State, 25 N.J. Tax 290, 2009 WL 5707108 (2009), aff'd, 2012 WL 715965 (N.J. Super. Ct. App. Div. 2012); School Dist. of City of Monessen v. Farnham & Pfile Co., Inc., 878 A.2d 142, 200 Ed. Law Rep. 250 (Pa. Commw. Ct. 2005).
- <sup>2</sup> Idaho Schools For Equal Educational Opportunity v. State, 140 Idaho 586, 97 P.3d 453, 191 Ed. Law Rep. 876 (2004); 3545 Mitchell Road, LLC v. Board of Sup'rs of Lee County, 62 So. 3d 379 (Miss. 2011).
- <sup>3</sup> In re Lietz Const. Co., 273 Kan. 890, 47 P.3d 1275 (2002).
- <sup>4</sup> CAPFA Capital Corp. 2000A v. Donegan, 929 So. 2d 569, 209 Ed. Law Rep. 969 (Fla. Dist. Ct. App. 5th Dist. 2006).
- <sup>5</sup> Southeastern Pennsylvania Transp. Authority v. Board of Revision of Taxes, 574 Pa. 707, 833 A.2d 710 (2003).
- <sup>6</sup> Turner v. Florida State Fair Authority, 974 So. 2d 470 (Fla. Dist. Ct. App. 2d Dist. 2008).
- <sup>7</sup> Pennsylvania State University v. Derry Tp. School Dist., 711 A.2d 615, 126 Ed. Law Rep. 1079 (Pa. Commw. Ct. 1998), rev'd on other grounds, 557 Pa. 91, 731 A.2d 1272 (1999).
- <sup>8</sup> In re Town of Rindge (New Hampshire Dept. of Environmental Services), 158 N.H. 21, 959 A.2d 188, 238 Ed. Law Rep. 339 (2008).
- <sup>9</sup> Robert D. Holloway, Inc. v. Pine Ridge Addition Residential Property Owners, 332 Ark. 450, 966 S.W.2d 241 (1998).
- <sup>10</sup> In re Drake, 434 B.R. 11 (Bankr. D. Mass. 2010) (applying Massachusetts law); Pilgrim's Pride Corp. v. Morris, 2011 WL 5827624 (W. Va. 2011).
- <sup>11</sup> Armenian Church of Lake Bluff v. Department of Revenue, 2011 IL App (1st) 102249, 353 Ill. Dec. 617, 956 N.E.2d 479 (App. Ct. 1st Dist. 2011), appeal denied, 356 Ill. Dec. 795, 962 N.E.2d 480 (Ill. 2011); In re Boy Scouts of America Quivira Council, 270 P.3d 1218 (Kan. Ct. App. 2012); Humboldt Field Research Institute v. Town of Steuben, 2011 ME 130, 36 A.3d 873 (Me. 2011); Phillipsburg Riverview Organization, Inc. v. Town of Phillipsburg, 26 N.J. Tax 167, 2011 WL 6323019 (2011); C.F.R.E, LLC v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011).
- <sup>12</sup> Phillipsburg Riverview Organization, Inc. v. Town of Phillipsburg, 26 N.J. Tax 167, 2011 WL 6323019 (2011); Covenant Healthcare System, Inc. v. City of Wauwatosa, 2011 WI 80, 336 Wis. 2d 522, 800 N.W.2d 906 (2011).
- <sup>13</sup> Markham v. Broward County, 825 So. 2d 472 (Fla. Dist. Ct. App. 4th Dist. 2002).
- <sup>14</sup> Matter of Houghton's Estate, 147 N.J. Super. 477, 371 A.2d 735 (App. Div. 1977), judgment aff'd, 75 N.J. 462, 383 A.2d 713 (1978).
- <sup>15</sup> Provena Covenant Medical Center v. Department of Revenue of State, 384 Ill. App. 3d 734, 323 Ill. Dec. 685, 894 N.E.2d 452 (4th Dist. 2008), judgment aff'd, 236 Ill. 2d 368, 339 Ill. Dec. 10, 925 N.E.2d 1131 (2010).

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

#### B. Limitations on Taxing Power

#### 2. Particular Political Subdivisions

## § 65. Tribal lands

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2005

Congress does not authorize state taxation of Indians or Indian reservations unless it makes its intention to do so unmistakably clear.<sup>1</sup> Thus, as a general rule, a State lacks jurisdiction to tax the lands, activities, and property of tribal members within the boundaries of a reservation unless there has been a cession of jurisdiction or other federal statutes permitting it;<sup>2</sup> in other words, a tribal member's on-reservation activities are immune from state taxation absent express congressional authorization of such tax.<sup>3</sup> Congress manifested its intent to allow state and local governments to tax Indian reservation lands when it authorized reservation lands to be allotted in fee to individual Indians, thus making lands freely alienable and withdrawing them from federal protection.<sup>4</sup> Furthermore, a tribe's reacquisition of reservation lands that had been conveyed to non-Indians did not render those lands nontaxable by state and local government. The subsequent repurchase of the reservation land by the tribe did not manifest any congressional intent to reassume federal protection of that land and to oust state taxing authority, particularly when Congress explicitly relinquished protection many years earlier.<sup>5</sup> In the field of taxation of private parties doing business with Native American tribes, ambiguities in the federal law are typically resolved in favor of tribal independence.<sup>6</sup> Thus, where the question is whether federal law requires the exemption of tribal interests from taxation, ambiguities in federal law should be resolved in favor of the tribe.<sup>7</sup>

### Practice Tip:

The Tax Injunction Act<sup>8</sup> did not bar Indian tribes' federal court suit to enjoin the State from collecting motor vehicle fuel taxes from tribally owned businesses, regardless of whether the allegedly taxable event occurred on or off the reservation, but did bar claims for such relief asserted by individual tribal members.<sup>9</sup>

A joint memorandum of understanding with an Indian tribe, and the Settlement Act, which largely abrogated the tribes' sovereign immunity with respect to activities on the settlement lands, may permit a State to issue and enforce a search warrant relative to the sale of unstamped, untaxed cigarettes on the settlement lands where the negotiated arrangement and the confirmatory statute effectively extinguishes the tribe's right to resist the application of state authority as to matters occurring on the settlement lands.<sup>10</sup>

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#### Footnotes

- <sup>1</sup> Coeur D'Alene Tribe of Idaho v. Hammond, 384 F.3d 674 (9th Cir. 2004).
- <sup>2</sup> Cass County, Minn. v. Leech Lake Band of Chippewa Indians, 524 U.S. 103, 118 S. Ct. 1904, 141 L. Ed. 2d 90 (1998); Coeur D'Alene Tribe of Idaho v. Hammond, 384 F.3d 674 (9th Cir. 2004).
- <sup>3</sup> Cass County, Minn. v. Leech Lake Band of Chippewa Indians, 524 U.S. 103, 118 S. Ct. 1904, 141 L. Ed. 2d 90 (1998).  
As to legislation permitting a State to collect a tax on private business activities within a federal enclave, see Am. Jur. 2d, Sales and Use Taxes § 21.
- <sup>4</sup> Cass County, Minn. v. Leech Lake Band of Chippewa Indians, 524 U.S. 103, 118 S. Ct. 1904, 141 L. Ed. 2d 90 (1998).
- <sup>5</sup> Cass County, Minn. v. Leech Lake Band of Chippewa Indians, 524 U.S. 103, 118 S. Ct. 1904, 141 L. Ed. 2d 90 (1998).
- <sup>6</sup> Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).
- <sup>7</sup> Ketchikan Gateway Borough v. Ketchikan Indian Corp., 75 P.3d 1042 (Alaska 2003).
- <sup>8</sup> 28 U.S.C.A. § 1341.
- <sup>9</sup> Winnebago Tribe of Nebraska v. Kline, 297 F. Supp. 2d 1291 (D. Kan. 2004).
- <sup>10</sup> Narragansett Indian Tribe v. Rhode Island, 449 F.3d 16 (1st Cir. 2006).

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VI. In General

#### B. Limitations on Taxing Power

#### 2. Particular Political Subdivisions

## § 66. Military bases

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2008, 2067, 2068

State taxation of a private interest within a federal enclave, such as a military reservation, is permissible only when Congress consents.<sup>1</sup> A statute permitting state taxation of immovable property owned by federal credit unions, and a statute permitting state taxation of property in control of the federal military, is evidence of Congress's intent to permit the taxation of immovable property owned by a federal credit union on a federal military reservation.<sup>2</sup> The cession or recession by the United States to the states of substantial jurisdiction to levy a sales or use tax with respect to the sale and use occurring within a federal military reservation, and to levy and collect income taxes as to persons residing there, is immaterial to the jurisdiction of the United States on the one hand and the State on the other hand with respect to ad valorem taxation of personal property on such a military reservation.<sup>3</sup> A city occupation tax, which by its terms applies to persons employed within the city, cannot be imposed on employees of an Air Force base within the city.<sup>4</sup>

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### Footnotes

<sup>1</sup> [Barksdale Federal Credit Union v. Louisiana Tax Com'n](#), 506 So. 2d 895 (La. Ct. App. 1st Cir. 1987), writ denied, 512 So. 2d 436 (La. 1987).  
As to legislation permitting a State to collect a tax on private business activities within a federal enclave, see [Am. Jur. 2d, Sales and Use Taxes § 21](#).

<sup>2</sup> [Barksdale Federal Credit Union v. Louisiana Tax Com'n](#), 506 So. 2d 895 (La. Ct. App. 1st Cir. 1987), writ denied, 512 So. 2d 436 (La. 1987).

<sup>3</sup> Appeal of Armed Forces Co-op. Insuring Ass'n, 5 Kan. App. 2d 787, 625 P.2d 11 (1981).

<sup>4</sup> U.S. v. City and County of Denver, 573 F. Supp. 686 (D. Colo. 1983).

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### A. In General

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West's Key Number Digest, [Constitutional Law](#) 🔑 1012, 4135

West's Key Number Digest, [Taxation](#) 🔑 2100

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### A. In General

## § 67. Generally

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2100

### A.L.R. Library

[Constitutionality, construction, and application of state and local public-utility-gross-receipts-tax statutes—modern cases, 58 A.L.R.5th 187](#)

The courts, and particularly the Supreme Court of the United States, are reluctant to interfere with the taxing systems of the various states.<sup>1</sup> The Federal Constitution, apart from the specific grant to the federal government of the exclusive power to levy limited classes of taxes and to regulate interstate and foreign commerce, leaves the states unrestricted in their power to tax those domiciled within them so long as the tax imposed is upon property within the state, or on privileges enjoyed there, and is not so palpably arbitrary or unreasonable as to infringe on the 14th Amendment.<sup>2</sup>

The power to tax being a sovereign power, constitutional provisions relating thereto do not operate as grants of power of taxation to the government but are merely limitations on a power which would otherwise be unrestricted.<sup>3</sup> As long as a state's taxation system does not violate any right guaranteed by the Federal Constitution, as between the citizen and his or her state, the Supreme Court is powerless to fashion any relief against such state taxation, however unjust, oppressive, or onerous.<sup>4</sup>

The motives of a legislative body exercising the taxing power are beyond the inquiry of the courts,<sup>5</sup> and the proper standard of review to be used in analyzing the constitutionality of a tax statute is the rational basis standard.<sup>6</sup> Furthermore, the reason why a tax was passed, or the purpose for which the money is being used once the revenue is raised, has no impact on whether a tax itself is constitutional.<sup>7</sup> Where the question is whether a state tax law contravenes rights secured by the Federal

Constitution, the decision depends upon the practical operation and effect of the tax as imposed and not upon any question of form, construction, or definition.<sup>8</sup>

The Due Process and Commerce Clauses bar states from taxing extraterritorial values.<sup>9</sup> Moreover, the Federal Commerce Clause bars the states from levying taxes that discriminate against interstate commerce or that burden it by subjecting activities to multiple or unfairly apportioned taxation.<sup>10</sup> It thus prohibits regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors. Thus, a State may not tax a transaction more heavily when it crosses state lines than when it occurs entirely within the state.<sup>11</sup> A state tax does not violate the Federal Constitution's Commerce Clause if such tax: (1) is applied to an activity with a substantial nexus within the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services provided by the State.<sup>12</sup>

Voter consent cannot convert an unconstitutional legislative assessment on real property into a constitutional one.<sup>13</sup>

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#### Footnotes

- <sup>1</sup> [State of Wisconsin v. J.C. Penney Co.](#), 311 U.S. 435, 61 S. Ct. 246, 85 L. Ed. 267, 130 A.L.R. 1229 (1940).
- <sup>2</sup> [Lawrence v. State Tax Commission of Mississippi](#), 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374 (1932).
- <sup>3</sup> § 78.
- <sup>4</sup> [Memphis Gaslight Co. v. Taxing Dist. of Shelby County](#), 109 U.S. 398, 3 S. Ct. 205, 27 L. Ed. 976 (1883).
- <sup>5</sup> [Oakland Raiders v. City of Berkeley](#), 65 Cal. App. 3d 623, 137 Cal. Rptr. 648 (1st Dist. 1976).
- <sup>6</sup> [Admiralty Suites and Inns, LLC v. Shelby County](#), 138 S.W.3d 233 (Tenn. Ct. App. 2003).
- <sup>7</sup> [Royal Bank of Pennsylvania v. Com.](#), 705 A.2d 515 (Pa. Commw. Ct. 1998), opinion adopted, 714 A.2d 553 (Pa. Commw. Ct. 1998), order aff'd, 556 Pa. 666, 730 A.2d 959 (1999).
- <sup>8</sup> [Lunding v. New York Tax Appeals Tribunal](#), 522 U.S. 287, 118 S. Ct. 766, 139 L. Ed. 2d 717 (1998).
- <sup>9</sup> [MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dept. of Revenue](#), 553 U.S. 16, 128 S. Ct. 1498, 170 L. Ed. 2d 404 (2008), referring to U.S. Const. Art. I, § 8, cl. 3 and U.S. Const. Amend. XIV. As to the Due Process Clause and state taxation, see § 70.
- <sup>10</sup> [MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dept. of Revenue](#), 553 U.S. 16, 128 S. Ct. 1498, 170 L. Ed. 2d 404 (2008), referring to U.S. Const. Art. I, § 8, cl. 3.
- <sup>11</sup> [Associated Industries of Missouri v. Lohman](#), 511 U.S. 641, 114 S. Ct. 1815, 128 L. Ed. 2d 639 (1994) (referring to U.S. Const. Art. I, § 8, cl. 3).
- <sup>12</sup> [Oklahoma Tax Com'n v. Jefferson Lines, Inc.](#), 514 U.S. 175, 115 S. Ct. 1331, 131 L. Ed. 2d 261 (1995); [Kevin Associates, L.L.C. v. Crawford](#), 865 So. 2d 34 (La. 2004); [Whirlpool Properties, Inc. v. Director, Div. of Taxation](#), 208 N.J. 141, 26 A.3d 446 (2011).
- <sup>13</sup> [Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Authority](#), 44 Cal. 4th 431, 79 Cal. Rptr. 3d 312, 187 P.3d 37 (2008).

## 71 Am. Jur. 2d State and Local Taxation § 68

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### A. In General

## § 68. Presumption of constitutionality

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1012

West's Key Number Digest, [Taxation](#) 🔑 2100

The presumption of the constitutionality of statutes is especially strong with respect to taxing statutes.<sup>1</sup> A tax is presumed to be constitutional<sup>2</sup> and will not be declared unconstitutional unless it so clearly contravenes constitutional limitations and guarantees as to leave no reasonable doubt as to its unconstitutionality<sup>3</sup> or unless it clearly, palpably, and plainly violates the constitution.<sup>4</sup> Even a retroactive statute is entitled to a presumption of constitutionality.<sup>5</sup> The presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes.<sup>6</sup> A taxpayer has a heavy burden to show, beyond a reasonable doubt, that the statute is unconstitutional.<sup>7</sup>

The question of whether a tax is unconstitutional as written bears upon the statutory language of the tax<sup>8</sup> whereas the question of whether a tax is unconstitutional as applied pertains to the circumstances under which the tax is imposed.<sup>9</sup> A tax may be found unconstitutional if it is patently arbitrary and capricious or void for uncertainty,<sup>10</sup> but harshness does not render a tax unconstitutional.<sup>11</sup>

### Observation:

A taxing statute is not facially unconstitutional if it operates constitutionally in some instances.<sup>12</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The burden of a taxpayer challenging the constitutionality of a taxing statute is heavy, given the presumption that a statute is constitutional and the road authority and wide discretion the legislature has in matters of taxation. [Wirth v. Com.](#), 95 A.3d 822 (Pa. 2014).

There is always a presumption of constitutional validity with regard to legislation and it is especially strong in respect to statutes relating to taxation. [In re Nestle USA, Inc.](#), 387 S.W.3d 610 (Tex. 2012).

### [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38](#), 490 Mich. 295, 806 N.W.2d 683 (2011); [Terminello v. Village of Piermont](#), 92 A.D.3d 673, 938 N.Y.S.2d 162 (2d Dep't 2012); [ABCO Enterprises v. Utah State Tax Com'n](#), 2009 UT 36, 211 P.3d 382 (Utah 2009).
- <sup>2</sup> [Saine v. State](#), 709 S.E.2d 379, 267 Ed. Law Rep. 897 (N.C. Ct. App. 2011); [DelGaizo v. Com.](#), 8 A.3d 429 (Pa. Commw. Ct. 2010).
- <sup>3</sup> [Fidelity Bank, N.A. v. Com. By and Through Dept. of Revenue](#), 165 Pa. Commw. 524, 645 A.2d 452 (1994).
- <sup>4</sup> § 78.
- <sup>5</sup> [Enterprise Leasing Co. of Phoenix v. Arizona Dept. of Revenue](#), 221 Ariz. 123, 211 P.3d 1 (Ct. App. Div. 1 2008).
- <sup>6</sup> [New Providence Apartments Co., L.L.C. v. Mayor and Council of Borough of New Providence](#), 423 N.J. Super. 210, 31 A.3d 958 (App. Div. 2011).
- <sup>7</sup> [McLane Minnesota, Inc. v. Commissioner of Revenue](#), 773 N.W.2d 289 (Minn. 2009).
- <sup>8</sup> [Pacific Power & Light Co. v. Montana Dept. of Revenue](#), 246 Mont. 398, 804 P.2d 397 (1991).
- <sup>9</sup> [Polaroid Corp. v. Offerman](#), 349 N.C. 290, 507 S.E.2d 284 (1998) (abrogated on other grounds by, [Lenox, Inc. v. Tolson](#), 353 N.C. 659, 548 S.E.2d 513 (2001)).
- <sup>10</sup> [C & D Trailer Sales v. Taxation and Revenue Dept.](#), 93 N.M. 697, 604 P.2d 835 (Ct. App. 1979).
- <sup>11</sup> [Stockler v. State, Dept. of Treasury](#), 75 Mich. App. 640, 255 N.W.2d 718 (1977).
- <sup>12</sup> [Wesley Medical Center v. McCain](#), 226 Kan. 263, 597 P.2d 1088 (1979).

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### A. In General

## § 69. Partial invalidity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2100

The elimination from a tax statute of an unconstitutional provision does not invalidate the entire enactment.<sup>1</sup> A tax statute which expressly provides that the invalidity of one part will not render the whole invalid will also operate to save the remaining sections of the statutory scheme.<sup>2</sup>

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#### Footnotes

<sup>1</sup> [Southwestern Oil Co. v. State of Tex.](#), 217 U.S. 114, 30 S. Ct. 496, 54 L. Ed. 688 (1910).

<sup>2</sup> [Collins v. Yosemite Park & Curry Co.](#), 304 U.S. 518, 58 S. Ct. 1009, 82 L. Ed. 1502 (1938).

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## 71 Am. Jur. 2d State and Local Taxation § 70

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### A. In General

## § 70. Due process requirements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 4135

West's Key Number Digest, [Taxation](#) 🔑 2100

### A.L.R. Library

[Validity, construction, and application of state laws imposing tax or license fee on possession, sale, or the like, of illegal narcotics, 12 A.L.R.5th 89](#)

The Due Process Clause demands that there exist some definite link, some minimum connection, between the taxing state and the person, property, or transaction that it seeks to tax,<sup>1</sup> as well as a rational relationship between the tax and the values connected with the taxing state.<sup>2</sup> The 14th Amendment to the Federal Constitution does not prohibit unwise taxes merely because they are unfair or burdensome taxes,<sup>3</sup> and it does not require the amount of general revenue taxes collected from a particular activity to be reasonably related to the value of the services provided to the activity.<sup>4</sup> A court will not invalidate a legally imposed revenue-raising tax under the Fifth or 14th Amendments because of the results that arise from the imposition of that tax.<sup>5</sup> A tax statute will be invalidated under the Fifth or 14th Amendments only if the statute is so arbitrary<sup>6</sup> as to compel the conclusion that it does not involve an exertion of the taxing power but constitutes, in substance and effect, the direct assertion of a forbidden power, such as the confiscation of property.<sup>7</sup>

The broad inquiry subsumed in both the Due Process and Commerce Clause requirements<sup>8</sup> as they bear on the State's ability to tax out-of-state activities is whether the taxing power exerted by the State bears a fiscal relation to the protection, opportunities, and benefits given by the State, i.e., whether the State has given anything for which it can ask return.<sup>9</sup>

The test established by the United States Supreme Court for determining the validity of a state tax under the Federal Constitution's Commerce Clause<sup>10</sup> encompasses the constitutional standards of the 14th Amendment's Due Process Clause; thus, a state tax statute which passes all four prongs of the Commerce Clause test does not violate the Due Process Clause.<sup>11</sup> However, the converse is not true.<sup>12</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

A two-step analysis applies to decide if a state tax abides by the Due Process Clause; first, there must be some definite link, some minimum connection, between the State and the person, property, or transaction it seeks to tax, and second, the income attributed to the State for tax purposes must be rationally related to values connected with the taxing State. *U.S. Const. Amend. 14. North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust*, 139 S. Ct. 2213 (2019).

To determine whether a State has the requisite minimum connection with the object of its tax, so as to satisfy Due Process Clause, the Supreme Court borrows from the familiar *International Shoe* test; the State has the power to impose a tax only when the taxed entity has certain minimum contacts with the State such that the tax does not offend traditional notions of fair play and substantial justice. *U.S. Const. Amend. 14. North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust*, 139 S. Ct. 2213 (2019).

The requirement under the Commerce Clause that a seller must have a substantial nexus with the taxing State in order to be required to collect sales tax is closely related to the due process requirement that there be some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax. *U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const. Amend. 14. South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

Both the Due Process and Commerce Clauses require that there be some definite link, some minimum connection, between a state and the person, property, or transaction it seeks to tax. *U.S.C.A. Const. Art. 1, § 8, cl. 3; U.S.C.A. Const. Amend. 14. Gore Enterprise Holdings, Inc. v. Comptroller of Treasury*, 437 Md. 492, 87 A.3d 1263 (2014).

## [END OF SUPPLEMENT]

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### Footnotes

<sup>1</sup> *MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dept. of Revenue*, 553 U.S. 16, 128 S. Ct. 1498, 170 L. Ed. 2d 404 (2008); *Fond du Lac Band of Lake Superior Chippewa v. Frans*, 649 F.3d 849 (8th Cir. 2011); *Kevin Associates, L.L.C. v. Crawford*, 865 So. 2d 34 (La. 2004); *Telebright Corp., Inc. v. Director, New Jersey Div. of Taxation*, 2012 WL 669964 (N.J. Super. Ct. App. Div. 2012); *Glatfelter Pulpwood Co. v. Com.*, 19 A.3d 572 (Pa. Commw. Ct. 2011).

<sup>2</sup> *MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dept. of Revenue*, 553 U.S. 16, 128 S. Ct. 1498, 170 L. Ed. 2d 404 (2008); *Fond du Lac Band of Lake Superior Chippewa v. Frans*, 649 F.3d 849 (8th Cir. 2011); *Telebright Corp., Inc. v. Director, New Jersey Div. of Taxation*, 2012 WL 669964 (N.J. Super. Ct. App. Div. 2012); *Glatfelter Pulpwood Co. v. Com.*, 19 A.3d 572 (Pa. Commw. Ct. 2011).

<sup>3</sup> *City of Pittsburgh v. Alco Parking Corp.*, 417 U.S. 369, 94 S. Ct. 2291, 41 L. Ed. 2d 132 (1974).

<sup>4</sup> *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).

<sup>5</sup> *Tanque Verde Enterprises v. City of Tucson*, 142 Ariz. 536, 691 P.2d 302 (1984).

- <sup>6</sup> Magee v. Home Depot U.S.A., Inc., 2011 WL 5252567 (Ala. Civ. App. 2011) (arbitrary and irrational).
- <sup>7</sup> Tanque Verde Enterprises v. City of Tucson, 142 Ariz. 536, 691 P.2d 302 (1984); Liberty v. California Coastal Com., 113 Cal. App. 3d 491, 170 Cal. Rptr. 247 (4th Dist. 1980).
- <sup>8</sup> § 67.
- <sup>9</sup> MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois Dept. of Revenue, 553 U.S. 16, 128 S. Ct. 1498, 170 L. Ed. 2d 404 (2008), referring to U.S. Const. Art. I, § 8, cl. 3 and U.S. Const. Amend. XIV; Telebright Corp., Inc. v. Director, New Jersey Div. of Taxation, 2012 WL 669964 (N.J. Super. Ct. App. Div. 2012).
- <sup>10</sup> § 67.
- <sup>11</sup> Amerada Hess Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury, 490 U.S. 66, 109 S. Ct. 1617, 104 L. Ed. 2d 58 (1989); Flight Options, LLC v. State, Dept. of Revenue, 172 Wash. 2d 487, 259 P.3d 234 (2011).
- <sup>12</sup> Flight Options, LLC v. State, Dept. of Revenue, 172 Wash. 2d 487, 259 P.3d 234 (2011).

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West's Key Number Digest, [Taxation](#) 🔑 2051, 2100, 2101, 3435

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A.L.R. Index, Taxes

West's A.L.R. Digest, [Commerce](#) 🔑 77.10(2), 77.10(3), 77.15, 78

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### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 24](#)



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## § 71. Full faith and credit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2100, 3435

The Full Faith and Credit Clause allows the taxation by one State of bonds issued by other states or by municipal corporations therein and owned by one of its citizens, although such bonds are exempt from taxation by the laws of the states in which they were issued,<sup>1</sup> and allows the taxation of stock in a foreign corporation owned by residents of the State imposing the tax when the property of the corporation is taxed at its domicile.<sup>2</sup> One State's imposition of a resident income tax on distributions from an Individual Retirement Account and Simplified Employee Pension Plan, when the taxpayers were assessed state income tax on contributions to those accounts by another State while the taxpayers lived in that other state, does not violate the Full Faith and Credit Clause of United States Constitution where there is no double taxation, the tax scheme tracks federal law, and the taxing state is not required to identify and factor in all of the various taxes that may have been previously imposed on contributions to tax-deferred accounts.<sup>3</sup>

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#### Footnotes

<sup>1</sup> [Bonaparte v. Appeal Tax Court of Baltimore](#), 104 U.S. 592, 26 L. Ed. 845, 1881 WL 19866 (1881).

<sup>2</sup> [Bacon v. Board of State Tax Com'rs](#), 126 Mich. 22, 85 N.W. 307 (1901).

<sup>3</sup> [Smith v. State Tax Assessor](#), 2004 ME 120, 860 A.2d 387 (Me. 2004).



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### Part Two. Power to Tax and Constitutional Limitations Thereon

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#### B. Particular Federal Constitutional Provisions

## § 72. Obligation of contracts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2675

West's Key Number Digest, [Taxation](#) 🔑 2100, 2101

The provision of the Federal Constitution prohibiting the states from passing any law “impairing the obligation of contracts”<sup>1</sup> operates under certain circumstances as a limitation upon the taxing power of the states.<sup>2</sup> However, a change in taxes cannot be blocked by contract pursuant to a claim that the change unconstitutionally impaired contractual rights.<sup>3</sup>

Public bonds issued by states and their subdivisions constitute contracts within the meaning of the provision, and a taxing power which was the source of payment thereof at the time when they were issued may not be withdrawn or limited thereafter, leaving no adequate means of payment.<sup>4</sup> Similarly, statutes providing that public securities or obligations be receivable in payment of taxes constitute contracts within the protection of the Constitution, and subsequent legislation forbidding the receipt of such obligations in payment of taxes is invalid.<sup>5</sup>

A statute requiring that each owner of rented property in the state reduce the rent charged to tenants by the amount by which the tax levied on the property in one year exceeded the taxes in the preceding year impaired the contractual obligations of the leases in violation of the federal and state constitutions inasmuch as the statute would require the landlords to collect less rent than the leases obligate the renters to pay.<sup>6</sup>

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#### Footnotes

<sup>1</sup> U.S. Const. Art. I, § 10.

<sup>2</sup> [Murray v. City of Charleston](#), 96 U.S. 432, 24 L. Ed. 760, 1877 WL 18506 (1877).



<sup>3</sup> [South Union Tp. v. Com.](#), 839 A.2d 1179 (Pa. Commw. Ct. 2003), [aff'd](#), 578 Pa. 564, 854 A.2d 476 (2004) (to the extent a \$0.50 surcharge per ton of waste could be deemed a tax, it was nominal).

<sup>4</sup> [Seibert v. U.S.](#), 122 U.S. 284, 7 S. Ct. 1190, 30 L. Ed. 1161 (1887).

<sup>5</sup> [Bragg v. Tuffts](#), 49 Ark. 554, 6 S.W. 158 (1887).

<sup>6</sup> [State ex rel. Bldg. Owners & Managers Ass'n of Milwaukee, Inc. v. Adamany](#), 64 Wis. 2d 280, 219 N.W.2d 274 (1974).

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## 71 Am. Jur. 2d State and Local Taxation § 73

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

#### B. Particular Federal Constitutional Provisions

## § 73. Privileges and immunities of citizenship

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2952, 3355

West's Key Number Digest, [Taxation](#) 🔑 2100

The Federal Constitution provides that that “the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.”<sup>1</sup> This guarantee prohibits one State from taxing the citizens of another state at a higher rate than is imposed upon its own citizens<sup>2</sup> and prevents the citizens of the taxing state from taking exemptions or deductions not granted to citizens of other states.<sup>3</sup> In other words, the clause protects the right of a citizen of any state to remove to and carry on business in another without being subjected in property or person to taxes more onerous than the citizens of the latter state are subjected to.<sup>4</sup> However, even under the Privileges and Immunities Clause, state legislatures retain, in taxation, even more than in other fields, the greatest freedom in classification.<sup>5</sup>

When a state taxing statute is challenged under the Privileges and Immunities Clause, the trial court must analyze the distribution of the tax burden between citizens and noncitizens to determine whether the law disadvantages noncitizens, determine whether the discrimination violates a fundamental right, and decide whether the State’s discriminatory treatment of noncitizens is within or outside the bounds set by the Federal Constitution.<sup>6</sup> To justify a tax that distinguishes between residents and nonresidents, a State must demonstrate that (i) there is a substantial reason for the difference in treatment; and (ii) the discrimination practiced against nonresidents bears a substantial relationship to the State’s objective.<sup>7</sup> Where a tax or fee that differentiates between residents and nonresidents is rationally related to a valid state purpose, a mere inequality in a given year will not necessarily implicate the Privileges and Immunities Clause.<sup>8</sup> Moreover, the states are not precluded from adopting justified and reasonable distinctions between residents and nonresidents in the provision of tax benefits whether in the form of tax deductions or tax credits.<sup>9</sup> Indeed, the Privileges and Immunities Clause does not require perfect, absolute, or precise equality,<sup>10</sup> and different treatment of residents and nonresidents in state tax laws are judged by their practical effect rather than by their form.<sup>11</sup> It is enough if the State achieves a reasonably fair distribution of burdens.<sup>12</sup> Accordingly, a special nonresident tax, which imposes on nonresidents, in addition to the state income tax, an income tax equal to the lowest county tax rate available during the applicable tax year, that treats residents and nonresidents with substantial equality does not violate the Privileges and Immunities Clause.<sup>13</sup>

A statute imposing a tax that does not discriminate between the citizens of other states and the citizens of the taxing state does not violate the Privileges and Immunities Clauses.<sup>14</sup> In other words, a tax not dependent on or affected by nonresidency status does not violate the Privileges and Immunities Clause.<sup>15</sup> Accordingly, a “Save Our Homes” amendment to the state constitution providing for an annual tax cap on increases in the assessment of homestead property does not violate a nonresident’s rights under the Privileges and Immunities Clause because the tax benefit is based on the way that the property is used, not on the status of the landowner as a resident or nonresident.<sup>16</sup>

The privileges and immunities requirements of the Federal Constitution protect nonresidents against discriminatory taxation but provide no right to be favored by discrimination or exemption.<sup>17</sup>

**Caution:**

The Privileges and Immunities Clause is a limitation upon the states only and in no way affects the powers of Congress over the District of Columbia.<sup>18</sup>

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Footnotes

- <sup>1</sup> U.S. Const. Art. IV, § 2, cl. 1.
- <sup>2</sup> *Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60, 40 S. Ct. 228, 64 L. Ed. 460 (1920); *Blake v. McClung*, 172 U.S. 239, 19 S. Ct. 165, 43 L. Ed. 432 (1898).
- <sup>3</sup> *Maxwell v. Dow*, 176 U.S. 581, 20 S. Ct. 494, 44 L. Ed. 597 (1900); *Sprague v. Fletcher*, 69 Vt. 69, 37 A. 239 (1896).
- <sup>4</sup> *Mandell v. Auditing Div. of Utah State Tax Com’n*, 2008 UT 34, 186 P.3d 335 (Utah 2008).
- <sup>5</sup> *Frey v. Comptroller of Treasury*, 422 Md. 111, 29 A.3d 475 (2011), cert. denied, 2012 WL 986857 (U.S. 2012).
- <sup>6</sup> *Kuhnen v. Musolf*, 143 Wis. 2d 134, 420 N.W.2d 401 (Ct. App. 1988).
- <sup>7</sup> *Frey v. Comptroller of Treasury*, 422 Md. 111, 29 A.3d 475 (2011), cert. denied, 2012 WL 986857 (U.S. 2012); *Panhandle Producers & Royalty Owners Ass’n v. Oklahoma Tax Com’n*, 2007 OK CIV APP 68, 162 P.3d 960 (Div. 1 2007).
- <sup>8</sup> *State, Commercial Fisheries Entry Com’n v. Carlson*, 191 P.3d 137 (Alaska 2008).
- <sup>9</sup> *Thorpe v. State*, 107 P.3d 1064 (Colo. App. 2004).
- <sup>10</sup> *State, Commercial Fisheries Entry Com’n v. Carlson*, 191 P.3d 137 (Alaska 2008); *Frey v. Comptroller of Treasury*, 422 Md. 111, 29 A.3d 475 (2011), cert. denied, 2012 WL 986857 (U.S. 2012); *Panhandle Producers & Royalty Owners Ass’n v. Oklahoma Tax Com’n*, 2007 OK CIV APP 68, 162 P.3d 960 (Div. 1 2007).
- <sup>11</sup> *Panhandle Producers & Royalty Owners Ass’n v. Oklahoma Tax Com’n*, 2007 OK CIV APP 68, 162 P.3d 960 (Div. 1 2007).
- <sup>12</sup> *State, Commercial Fisheries Entry Com’n v. Carlson*, 191 P.3d 137 (Alaska 2008).
- <sup>13</sup> *Frey v. Comptroller of Treasury*, 422 Md. 111, 29 A.3d 475 (2011), cert. denied, 2012 WL 986857 (U.S. 2012).

<sup>14</sup> Williams v. Fears, 179 U.S. 270, 21 S. Ct. 128, 45 L. Ed. 186 (1900).

<sup>15</sup> Mandell v. Auditing Div. of Utah State Tax Com'n, 2008 UT 34, 186 P.3d 335 (Utah 2008).

<sup>16</sup> Lanning v. Pilcher, 16 So. 3d 294 (Fla. Dist. Ct. App. 1st Dist. 2009), review denied, 37 So. 3d 847 (Fla. 2010) and cert. denied, 131 S. Ct. 646, 178 L. Ed. 2d 479 (2010).

<sup>17</sup> Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).

<sup>18</sup> Banner v. U.S., 428 F.3d 303 (D.C. Cir. 2005).

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## 71 Am. Jur. 2d State and Local Taxation § 74

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

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## § 74. Imports and exports

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Commerce](#)  77.10(2), 77.15

### A.L.R. Library

[Validity, under import-export clause of Federal Constitution, of state tax on corporations, 20 A.L.R.2d 152](#)

The United States Constitution provides that “no state shall, without the consent of the Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws.”<sup>1</sup> The Import and Export Clause prevents the importing states from laying a tax on the nonimporting states, to which the imported property is or might ultimately be destined,<sup>2</sup> so long as there is some entrance into the import-export stream.<sup>3</sup> A per se violation of the Import and Export Clause may be found if the goods themselves are taxed by a State after they have entered the stream of exportation or importation.<sup>4</sup>

The words “imports” and “exports,” as they are used in the Import-Export Clause, refer to property imported from and exported to foreign countries, not other states of the Union.<sup>5</sup>

The prohibition of the Import-Export Clause does not extend to fees imposed by a State to support the administration of its inspection laws.<sup>6</sup> Furthermore, the Import-Export Clause does not constitute a broad prohibition against all forms of state taxation falling on imports.<sup>7</sup> Thus, a State may impose a tax on activities connected with the exports or imports, such as handling the goods at the port or transporting them to or from the port.<sup>8</sup> In determining whether a state tax on imported goods violates the Import-Export Clause, the focus is not on whether the goods have lost their status as imports but is, instead, on whether the tax sought to be imposed is an “impost or duty.”<sup>9</sup> Import-Export Clause determinations require an analysis of

whether the challenged extraction offends the policy considerations underlying the clause.<sup>10</sup> The three-pronged Import-Export Clause test requires determinations as to: (1) whether the challenged tax impairs the federal government from speaking with one voice when regulating commercial relations with foreign governments; (2) whether the tax threatens to disturb the harmony among the states by allowing seaboard states, with their crucial ports of entry, to levy taxes on citizens of other states by taxing goods merely flowing through their ports; and (3) whether the tax diverts import-derived revenue from the federal government to the states.<sup>11</sup> An ad valorem property tax on proceeds of goods imported or exported by a corporation does not violate the Import-Export Clause<sup>12</sup> nor does a state's single business tax on the business activities of a taxpayer that owns duty-free stores located in the "point of no return" areas beyond United States customs exit points that link the United States and Canada<sup>13</sup> or coal severance taxes in connection with the mining and processing of coal for export.<sup>14</sup>

**Practice Tip:**

Allegations in an alligator farm's petition that state tag fees and severance fees are only collected on skins shipped out of state and not on skins retained in the state, except for those to be tanned or used in taxidermy, are sufficient to state a cause of action that the state taxes violate the Commerce and Import and Export Clauses.<sup>15</sup>

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Footnotes

- <sup>1</sup> U.S. Const. Art. I, § 10, cl. 2.
- <sup>2</sup> *Youngstown Sheet & Tube Co. v. Bowers*, 358 U.S. 534, 79 S. Ct. 383, 3 L. Ed. 2d 490, 82 Ohio L. Abs. 261 (1959).
- <sup>3</sup> *Kosydar v. National Cash Register Co.*, 417 U.S. 62, 94 S. Ct. 2108, 40 L. Ed. 2d 660 (1974); *Pelts & Skins, L.L.C. v. Louisiana Dept. of Wildlife and Fisheries*, 938 So. 2d 1047 (La. Ct. App. 1st Cir. 2006), writ denied, 939 So. 2d 1281 (La. 2006).
- <sup>4</sup> *Pelts & Skins, L.L.C. v. Louisiana Dept. of Wildlife and Fisheries*, 938 So. 2d 1047 (La. Ct. App. 1st Cir. 2006), writ denied, 939 So. 2d 1281 (La. 2006).
- <sup>5</sup> *Territory of New Mexico ex rel. E. J. McLean & Co. v. Denver & R. G. R. Co.*, 203 U.S. 38, 27 S. Ct. 1, 51 L. Ed. 78 (1906).
- <sup>6</sup> *Turner v. State of Maryland*, 107 U.S. 38, 2 S. Ct. 44, 27 L. Ed. 370 (1883).  
As to what laws may properly be classed as inspection laws within the meaning of the constitutional import-export provision, see *Am. Jur. 2d, Inspection Laws* §§ 1 et seq.
- <sup>7</sup> *Limbach v. Hooven & Allison Co.*, 466 U.S. 353, 104 S. Ct. 1837, 80 L. Ed. 2d 356 (1984).
- <sup>8</sup> *Western Md. Ry. Co. v. Rogan*, 340 U.S. 520, 71 S. Ct. 450, 95 L. Ed. 501 (1951); *Canton R. Co. v. Rogan*, 340 U.S. 511, 71 S. Ct. 447, 95 L. Ed. 488, 20 A.L.R.2d 145 (1951).
- <sup>9</sup> *Limbach v. Hooven & Allison Co.*, 466 U.S. 353, 104 S. Ct. 1837, 80 L. Ed. 2d 356 (1984).
- <sup>10</sup> *Western Oil and Gas Ass'n v. Cory*, 726 F.2d 1340 (9th Cir. 1984), judgment aff'd, 471 U.S. 81, 105 S. Ct. 1859, 85 L. Ed. 2d 61 (1985).
- <sup>11</sup> *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 96 S. Ct. 535, 46 L. Ed. 2d 495 (1976); *Ammex, Inc. v. Department of Treasury*, 273 Mich. App. 623, 732 N.W.2d 116 (2007); *U.S. Steel Min. Co., LLC v. Helton*, 219 W. Va. 1, 631 S.E.2d 559 (2005).

<sup>12</sup> R.J. Reynolds Tobacco Co. v. Durham County, N.C., 479 U.S. 130, 107 S. Ct. 499, 93 L. Ed. 2d 449 (1986).

<sup>13</sup> Ammex, Inc. v. Department of Treasury, 273 Mich. App. 623, 732 N.W.2d 116 (2007).

<sup>14</sup> U.S. Steel Min. Co., LLC v. Helton, 219 W. Va. 1, 631 S.E.2d 559 (2005).

<sup>15</sup> Pelts & Skins, L.L.C. v. Louisiana Dept. of Wildlife and Fisheries, 938 So. 2d 1047 (La. Ct. App. 1st Cir. 2006), writ denied, 939 So. 2d 1281 (La. 2006).

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## 71 Am. Jur. 2d State and Local Taxation § 75

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

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## § 75. Imports and exports—Original packages

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Commerce](#)  77.10(3)

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 24](#) (Complaint, petition, or declaration-Allegation—Unconstitutional assessment of imported goods contained in original packages)

Imported goods preserve their character as imports and are consequently not subject to either direct or indirect state taxation as long as they remain unsold and in the original packages in which they were imported.<sup>1</sup> Imported goods lose their character as such and become mingled with the other property in the state when they are taken from the original packages<sup>2</sup> or when, though not removed from the original package, the goods have been put to the use for which they were imported.<sup>3</sup> Original packages of imported goods which cannot be assessed for local taxation consist of the boxes, cases, or bales in which the goods are shipped, and not the smaller packages therein contained, although these are the packages in which the goods are put up by the manufacturer. When the packages in which the goods are shipped reach their destination for use or trade, and are opened and the separate packages therein exposed or offered for sale, these become subject to local taxation like other property in the state.<sup>4</sup>

When an importer enters a cargo van to remove cargo with the intent to act as a retailer, to effect further storage of the imported goods, the goods remain immune from taxation under the Federal Constitution. However, where an importer enters a cargo van with the intent to act as a wholesaler, removing the imported goods for sale and delivery to dealers, the opening of the van constitutes the breaking of bulk and results in loss of immunity from taxation.<sup>5</sup> Whether a sea van or cargo container is merely a means of transportation or whether it constitutes an original package so that its opening causes the goods inside to lose their import status is a fact question to be answered according to the circumstances of each case.<sup>6</sup> For



purposes of personal property taxation of imports not yet put up for sale, each item which arrives in a shipment is an integral part of the aggregate which composes the commercial unit, and when an item is separated from the commercial unit, or is sorted or segregated from other items comprising the commercial unit, the original package is broken or “opened,” and the merchandise is taxable.<sup>7</sup>

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#### Footnotes

- <sup>1</sup> [Sonneborn Bros. v. Cureton, 262 U.S. 506, 43 S. Ct. 643, 67 L. Ed. 1095 \(1923\).](#)
- <sup>2</sup> [Sonneborn Bros. v. Cureton, 262 U.S. 506, 43 S. Ct. 643, 67 L. Ed. 1095 \(1923\).](#)
- <sup>3</sup> [Youngstown Sheet & Tube Co. v. Bowers, 358 U.S. 534, 79 S. Ct. 383, 3 L. Ed. 2d 490, 82 Ohio L. Abs. 261 \(1959\).](#)
- <sup>4</sup> [F. May & Co. v. City of New Orleans, 178 U.S. 496, 20 S. Ct. 976, 44 L. Ed. 1165 \(1900\).](#)
- <sup>5</sup> [J. N. Ceazan Co. v. County of Los Angeles, 102 Cal. App. 3d 486, 162 Cal. Rptr. 414 \(2d Dist. 1980\).](#)
- <sup>6</sup> [Singer Co. v. County of Kings, 46 Cal. App. 3d 852, 121 Cal. Rptr. 398 \(5th Dist. 1975\).](#)
- <sup>7</sup> [Penton Imports Co. v. Collins, 46 Ohio St. 2d 346, 75 Ohio Op. 2d 402, 348 N.E.2d 702 \(1976\).](#)

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## 71 Am. Jur. 2d State and Local Taxation § 76

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

#### B. Particular Federal Constitutional Provisions

## § 76. Duties of tonnage

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Commerce](#)  78

"No state shall, without the consent of Congress, lay any duty of tonnage."<sup>1</sup> "Duties of tonnage" are defined as any tax for the privilege of entering a port and navigating the navigable waters of the state without any service having been rendered.<sup>2</sup> The Tonnage Clause prohibits not only a pro rata tax but also any duty on the ship whether a fixed sum upon its whole tonnage or a sum to be ascertained by comparing the amount of tonnage with the rate of duty.<sup>3</sup> The purpose of the Tonnage Clause is to prevent states from nullifying the constitutional prohibition against import and export duties by taxing the vessels transporting the merchandise.<sup>4</sup>

The Tonnage Clause does not operate as a ban on any and all taxes which fall on vessels that use a state's port, harbor, or other waterways.<sup>5</sup> Indeed, a ship or vessel, although duly enrolled and licensed under the laws of the United States, is not exempt from taxation as property in the place in which it is located in the same manner as other property since a tax based upon its value and not upon its capacity as an instrument of commerce is not a duty of tonnage.<sup>6</sup> On the other hand, a State cannot take what would otherwise amount to a tax on a ship's capacity and evade the Tonnage Clause by calling that tax a charge on the owner or supercargo, thereby justifying an evasion of a great principle by producing a dictionary or a dictum to prove that a ship-captain is not a vessel nor a supercargo an import.<sup>7</sup> Thus, a city's ad valorem property tax on large vessels docking at a city's ports, which took on more than \$1 million in cargo or that transacted business in that amount in ports, violates the Tonnage Clause as effectively a charge for the privilege of entering, trading in, or lying in a port.<sup>8</sup> Moreover, a passenger wharfage fee imposed by a port authority is not a reasonable fee for general services rendered but rather constitutes an impermissible duty of tonnage, and thus does not comport with the Tonnage Clause, where the fee is used for raising general revenues and for projects and services which do not benefit ferry passengers.<sup>9</sup>

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#### Footnotes

- <sup>1</sup> U.S. Const. Art. I, § 10, cl. 3.
- <sup>2</sup> Parkersburg & O.R. Transp. Co. v. City of Parkersburg, 107 U.S. 691, 2 S. Ct. 732, 27 L. Ed. 584 (1883).
- <sup>3</sup> Polar Tankers, Inc. v. City of Valdez, Alaska, 557 U.S. 1, 129 S. Ct. 2277, 174 L. Ed. 2d 1 (2009).  
The Tonnage Clause prohibits duties to raise general revenues. Bridgeport and Port Jefferson Steamboat Co. v. Bridgeport Port Authority, 567 F.3d 79 (2d Cir. 2009), cert. denied, 130 S. Ct. 1075, 175 L. Ed. 2d 887 (2010).
- <sup>4</sup> Polar Tankers, Inc. v. City of Valdez, Alaska, 557 U.S. 1, 129 S. Ct. 2277, 174 L. Ed. 2d 1 (2009).
- <sup>5</sup> Polar Tankers, Inc. v. City of Valdez, Alaska, 557 U.S. 1, 129 S. Ct. 2277, 174 L. Ed. 2d 1 (2009).
- <sup>6</sup> Wheeling, P. & C. Transp. Co. v. City of Wheeling, 99 U.S. 273, 25 L. Ed. 412, 1878 WL 18244 (1878); In re State Tonnage Tax Cases, 79 U.S. 204, 20 L. Ed. 370, 20 L. Ed. 376, 1870 WL 12754 (1870).
- <sup>7</sup> Polar Tankers, Inc. v. City of Valdez, Alaska, 557 U.S. 1, 129 S. Ct. 2277, 174 L. Ed. 2d 1 (2009).
- <sup>8</sup> Polar Tankers, Inc. v. City of Valdez, Alaska, 557 U.S. 1, 129 S. Ct. 2277, 174 L. Ed. 2d 1 (2009) (the court pointing out that in practice, the tax applied to 28 vessels, of which 24 were oil tankers, such tax applied to no other form of personal property other than large vessels, it exempted small vessels under 95 feet in length, the tax was designed for raising revenue for general municipal services, and it was not related to services provided to the vessel).
- <sup>9</sup> Bridgeport and Port Jefferson Steamboat Co. v. Bridgeport Port Authority, 567 F.3d 79 (2d Cir. 2009), cert. denied, 130 S. Ct. 1075, 175 L. Ed. 2d 887 (2010).

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## § 77. Poll taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2051

A poll or “head tax” is a fixed tax assessed on each eligible person.<sup>1</sup> The Due Process Clause of the 14th Amendment does not require notice and an opportunity to be heard in connection with the assessment of a state poll tax because the nature of such taxes is such that nothing that a taxpayer does affects the amount to be collected.<sup>2</sup> Although a state capitation tax on every person leaving the state by any vehicle employed in the business of transporting passengers for hire does not violate the Commerce Clause of the Federal Constitution, such a tax is invalid if it interferes with the operations of the federal government and deprives a taxpayer of the privileges and immunities of national citizenship.<sup>3</sup>

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### Footnotes

<sup>1</sup> [City of Portland v. Cook](#), 170 Or. App. 245, 12 P.3d 70 (2000); [Borough of Crafton v. Gaitens](#), 112 Pa. Commw. 147, 534 A.2d 1149 (1987).  
As to the abolition of the poll tax or other tax as a prerequisite to voting in federal elections, see [Am. Jur. 2d, Elections § 162](#).

<sup>2</sup> [Hagar v. Reclamation Dist. No. 108](#), 111 U.S. 701, 4 S. Ct. 663, 28 L. Ed. 569 (1884).

<sup>3</sup> [Crandall v. State of Nevada](#), 73 U.S. 35, 18 L. Ed. 745, 1867 WL 11151 (1867).



## 71 Am. Jur. 2d State and Local Taxation Two VII C Refs.

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### Part Two. Power to Tax and Constitutional Limitations Thereon

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West's Key Number Digest, [Counties](#) 🔑 190.2

West's Key Number Digest, [Municipal Corporations](#) 🔑 957(2)

West's Key Number Digest, [States](#) 🔑 119

West's Key Number Digest, [Statutes](#) 🔑 95(1), 104, 107(6), 121(1), 278.9, 278.17, 278.39

West's Key Number Digest, [Taxation](#) 🔑 2016, 2027, 2028, 2029, 2076, 2414, 2416, 2076, 2100, 2121, 2160, 2161, 2510

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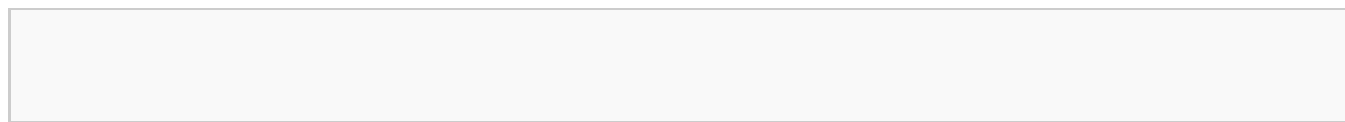
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West's A.L.R. Digest, [Taxation](#) 🔑 2016, 2027, 2028, 2029, 2076, 2414, 2416, 2076, 2100, 2121, 2160, 2161, 2510

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 10](#)



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## 71 Am. Jur. 2d State and Local Taxation § 78

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#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 1. In General

## § 78. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2100

Generally, the legislature is supreme in the area of taxation.<sup>1</sup> The legislature's power to tax, however, is restricted generally by the Federal Constitution and specifically by the state constitution.<sup>2</sup> The power to tax being a sovereign power, constitutional provisions relating thereto do not operate as grants of power of taxation to the government but are merely limitations on a power which would otherwise be unrestricted.<sup>3</sup> As alternatively stated, the exercise of a state legislature's discretionary taxing power is subject to limits, or express elimination, prescribed by the state constitution.<sup>4</sup> However, it has also been held that the foundation of the State's taxing authority is in the state's constitution, which confers general legislative power upon the legislature.<sup>5</sup>

Constitutional restrictions on legislative taxing powers must be strictly construed against the limitation.<sup>6</sup>

Courts will not declare taxation legislation unconstitutional unless it clearly, palpably,<sup>7</sup> and plainly violates the constitution.<sup>8</sup> Why a tax was passed or the purpose for which money is being used once revenue is raised does not impact on whether the tax itself is constitutional.<sup>9</sup>

Under the constitution of one state, a legislature is limited in its power to exempt property from taxation only by the constitutional requirements to exempt via statute and to impose taxation in a manner which does not violate equal protection and due process of the laws.<sup>10</sup>

Under a constitutional provision prohibiting a State from levying a property tax for state purposes, no state interest or function can be financed by means of property taxes, and all traditional state interests and functions must be financed by means other than property taxes.<sup>11</sup>



Footnotes

<sup>1</sup> § 57.

<sup>2</sup> § 67.

<sup>3</sup> *Bielski v. Zorn*, 627 N.E.2d 880 (Ind. Tax Ct. 1994); *Sarpy County Farm Bureau v. Learning Community of Douglas and Sarpy Counties*, 283 Neb. 212, 808 N.W.2d 598 (2012).

<sup>4</sup> *Abbott Laboratories v. Franchise Tax Bd.*, 175 Cal. App. 4th 1346, 96 Cal. Rptr. 3d 864 (2d Dist. 2009), as modified, (Aug. 6, 2009); *Huber v. Colorado Mining Ass'n*, 264 P.3d 884 (Colo. 2011).

<sup>5</sup> *Callison v. Huelsman*, 168 Ohio App. 3d 471, 2006-Ohio-4395, 860 N.E.2d 829 (2d Dist. Miami County 2006).

<sup>6</sup> *Hibernia Bank v. State Bd. of Equalization*, 166 Cal. App. 3d 393, 212 Cal. Rptr. 556 (1st Dist. 1985); *Sarpy County Farm Bureau v. Learning Community of Douglas and Sarpy Counties*, 283 Neb. 212, 808 N.W.2d 598 (2012).

<sup>7</sup> *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich. 295, 806 N.W.2d 683 (2011).

<sup>8</sup> *Hope Evangelical Lutheran Church v. Iowa Dept. of Revenue and Finance*, 463 N.W.2d 76 (Iowa 1990); *Opinion of the Justices of the Supreme Judicial Court*, 601 A.2d 610 (Me. 1991); *Marshall v. Com.*, 2012 WL 8704 (Pa. Commw. Ct. 2012).

<sup>9</sup> *Royal Bank of Pennsylvania v. Com.*, 705 A.2d 515 (Pa. Commw. Ct. 1998), opinion adopted, 714 A.2d 553 (Pa. Commw. Ct. 1998), order aff'd, 556 Pa. 666, 730 A.2d 959 (1999).

<sup>10</sup> *Powder River County v. State*, 2002 MT 259, 312 Mont. 198, 60 P.3d 357 (2002).

<sup>11</sup> *Sarpy County Farm Bureau v. Learning Community of Douglas and Sarpy Counties*, 283 Neb. 212, 808 N.W.2d 598 (2012).

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## 71 Am. Jur. 2d State and Local Taxation § 79

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 1. In General

## § 79. Affirmative and nonrestrictive provisions

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### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2100

States have a very wide discretion in the laying of their taxes. They may classify property for taxation; may set up different modes of assessment, valuation, and collection; and may tax some lands or property at higher rates than others, all without offense to the constitution.<sup>1</sup>

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### Footnotes

<sup>1</sup> [Weissinger v. White, 733 F.2d 802 \(11th Cir. 1984\).](#)

## 71 Am. Jur. 2d State and Local Taxation § 80

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 1. In General

## § 80. Provisions similar to those of Federal Constitution

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2027, 2100

Some provisions of the Federal Constitution, particularly those relating to due process of law<sup>1</sup> and the impairment of contractual obligations,<sup>2</sup> are duplicated, either literally or in effect, by provisions of state constitutions.

It has been held that a state due process clause applies to a taxing statute only if the statute is so arbitrary as to necessitate the conclusion that it does not involve the exercise of taxing power but constitutes a direct exercise of a different and forbidden power, i.e., the confiscation of property.<sup>3</sup> The due process clause does not require that the tax being levied be directly related to specific benefits received by the taxpayer.<sup>4</sup>

A state tax statute also may be attacked specifically upon the ground that it is violative of the impairment of contracts clause of the state constitution. Thus, it has been held that a statute forbidding taxation by a municipality of property located in two wards which had recently been annexed, to pay any municipal indebtedness contracted prior to the passage of the act of annexation, did not violate a clause in the state constitution providing that no law "impairing the obligation of contracts shall be passed" when applied so as to exclude levying against property in such wards a municipal tax imposed to pay an indebtedness incurred under certain paving contracts prior to the effective date of the act of annexation.<sup>5</sup> Furthermore, as is true in connection with due process requirements, a state statute may be assailed on the ground that it impairs the obligation of a contract without its being made clear whether the contract clause of the federal or state constitution was relied upon. Thus, it has been held in such a case that an occupation tax on lawyers did not, as applied to lawyers previously licensed to practice, impair the obligation of the contract between the licensee and the state.<sup>6</sup>

Another requirement frequently found in state constitutions which is analogous to a corresponding provision of the Federal Constitution, although perhaps not as closely so as are state requirements of due process and prohibitions of contract impairments, is that which, although worded differently with respect to details as between different state constitutions, in

effect prohibits the legislature from granting to individuals, citizens, or corporations, or classes thereof, privileges and immunities not accorded to all.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

When considering whether a legislative tax classification violates the equal and uniform clause of the New Mexico Constitution, the Supreme Court employs the same test used to determine whether the classification violates the equal protection clause of the Fourteenth Amendment; and therefore, the Court applies a rational basis review for the taxation classification at issue. [U.S.C.A. Const.Amend. 14](#); West's [NMSA Const. Art. 8, § 1\(A\)](#). [Pinghua Zhao v. Montoya, 2014-NMSC-025, 329 P.3d 676 \(N.M. 2014\)](#).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Am. Jur. 2d, Constitutional Law §§ 942 to 1024](#).
- <sup>2</sup> [Am. Jur. 2d, Constitutional Law §§ 775 to 783](#).
- <sup>3</sup> [Windham First Taxing Dist. v. Town of Windham, 208 Conn. 543, 546 A.2d 226 \(1988\)](#).
- <sup>4</sup> [Windham First Taxing Dist. v. Town of Windham, 208 Conn. 543, 546 A.2d 226 \(1988\)](#).
- <sup>5</sup> [U.S. v. City of Memphis, 97 U.S. 284, 24 L. Ed. 937, 1877 WL 18624 \(1877\)](#) (the court pointed out that there was no contract relation between the property owners of the two wards in question and the complainant, the holder of a judgment granted in a suit to enforce the paving contract indebtedness).
- <sup>6</sup> [Ex parte Williams, 31 Tex. Crim. 262, 20 S.W. 580 \(1892\)](#).
- <sup>7</sup> [HL Farm Corp. v. Self, 877 S.W.2d 288 \(Tex. 1994\)](#) (the statutory exclusion of land owned by nonresident aliens from benefits of reduced-taxation agricultural dedication violated the state constitution's equal protection provisions as applied to a farm owned by an out-of-state corporation that was in turn owned by foreign corporation).

## 71 Am. Jur. 2d State and Local Taxation § 81

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements


##### C. Effect of State Constitutions

##### 1. In General

## § 81. Taxation according to value

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2100, 2160, 2161

Many states have constitutional provisions requiring that property be taxed ad valorem or according to value although the exact phrasing used varies among the states.<sup>1</sup> In at least one state, the state's constitution provides that no state ad valorem taxes may be levied on any property within that state.<sup>2</sup> Such a state constitutional prohibition against state ad valorem taxes is violated whenever state control denies a taxing authority meaningful discretion in imposing an ad valorem tax.<sup>3</sup>

### Definitions:

"Full value," under the provision of a state constitution mandating that real estate tax assessments shall in no case exceed full value, means the price upon which a reasonably informed buyer and seller would agree, in an open market setting, and that the best evidence of such value is a recent sale of the subject property between such a buyer and seller, neither of whom is acting under any constraint or compulsion regarding the transaction.<sup>4</sup> Similarly, an "ad valorem tax" is a tax on the value of property<sup>5</sup>

### Footnotes

- <sup>1</sup> Town of St. John v. State Bd. of Tax Com'rs, 730 N.E.2d 240 (Ind. Tax Ct. 2000), rev'd on other grounds, 751 N.E.2d 657 (Ind. 2001) (just valuation); Susquehanna Development, L.L.C. v. Assessor of City of Binghamton, 185 Misc. 2d 267, 712 N.Y.S.2d 817 (Sup 2000) (full value); Harbour Village Apartments v. City of Mukilteo, 139 Wash. 2d 604, 989 P.2d 542 (1999) (ad valorem).
- <sup>2</sup> West Orange-Cove Consol. I.S.D. v. Alanis, 107 S.W.3d 558, 178 Ed. Law Rep. 576 (Tex. 2003).
- <sup>3</sup> West Orange-Cove Consol. I.S.D. v. Alanis, 107 S.W.3d 558, 178 Ed. Law Rep. 576 (Tex. 2003).
- <sup>4</sup> Susquehanna Development, L.L.C. v. Assessor of City of Binghamton, 185 Misc. 2d 267, 712 N.Y.S.2d 817 (Sup 2000).
- <sup>5</sup> Motorola, Inc. v. Tarrant County Appraisal Dist., 980 S.W.2d 899 (Tex. App. Fort Worth 1998).

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## 71 Am. Jur. 2d State and Local Taxation § 82

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 1. In General

## § 82. Taxation according to value—Operation and effect

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3564

West's Key Number Digest, [Taxation](#) 🔑 2160, 2510

### A.L.R. Library

[Requirement of full-value real property taxation assessments, 42 A.L.R.4th 676](#)

While a state legislature has authority to require that real property in the state be assessed at full value for the purpose of real property taxation,<sup>1</sup> it has been held or recognized that real property within a state cannot be assessed at full value for real property tax purposes while other property in the taxing jurisdiction is assessed at a fraction of full value.<sup>2</sup> Furthermore, it has been held or recognized that under state constitutional provisions requiring assessment of real property according to its value, it is permissible to make uniform fractional assessments of the property<sup>3</sup> although other states have refused to permit fractional assessments.<sup>4</sup>

A constitutional provision requiring property to be taxed in proportion to its value does not require that all property in the state be taxed,<sup>5</sup> that a uniform method of valuation be employed,<sup>6</sup> or that exemptions from taxation or such classifications of property as are not purely arbitrary or capricious be avoided.<sup>7</sup>

A homestead property valuation scheme authorized by a local constitutional amendment, under which properties are valued for ad valorem tax purposes on their date of acquisition, does not violate equal protection where the classifications drawn among homeowners based upon purchase date promotes a legitimate governmental interest in encouraging neighborhood

preservation, continuity, and stability.<sup>8</sup>

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#### Footnotes

- <sup>1</sup> Supervisor of Assessments of Baltimore City v. Har Sinai West Corp., 95 Md. App. 631, 622 A.2d 786 (1993); Imperial Palace, Inc. v. State By and Through Dept. of Taxation, 108 Nev. 1060, 843 P.2d 813 (1992); Metropolitan Holding Co. v. Board of Review of City of Milwaukee, 173 Wis. 2d 626, 495 N.W.2d 314 (1993).
- <sup>2</sup> Board of Assessors of Danvers v. Tenneco, Inc., Tennessee Gas Pipeline Div., 388 Mass. 739, 447 N.E.2d 666 (1983); Owen Steel Co., Inc. v. South Carolina Tax Com'n, 287 S.C. 274, 337 S.E.2d 880 (1985).
- <sup>3</sup> Sacramento County v. Hickman, 66 Cal. 2d 841, 59 Cal. Rptr. 609, 428 P.2d 593 (1967) (full cash value); Parker County v. Spindletop Oil and Gas Co., 628 S.W.2d 765 (Tex. 1982) (market value).
- <sup>4</sup> Russman v. Luckett, 391 S.W.2d 694 (Ky. 1965) (fair cash value); Board of Assessors of Danvers v. Tenneco, Inc., Tennessee Gas Pipeline Div., 388 Mass. 739, 447 N.E.2d 666 (1983) (fair cash value).
- <sup>5</sup> State v. Alabama Fuel & Iron Co., 188 Ala. 487, 66 So. 169 (1914).
- <sup>6</sup> German Nat. Bank v. Kimball, 103 U.S. 732, 26 L. Ed. 469, 1880 WL 18758 (1880).
- <sup>7</sup> State v. Birmingham Southern R. Co., 182 Ala. 475, 62 So. 77 (1913).
- <sup>8</sup> Columbus-Muscogee County Consol. Government v. CM Tax Equalization, Inc., 276 Ga. 332, 579 S.E.2d 200 (2003).

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## 71 Am. Jur. 2d State and Local Taxation § 83

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 1. In General

## § 83. Retroactive legislation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3907

West's Key Number Digest, [Statutes](#) 🔑 278.9, 278.39

West's Key Number Digest, [Taxation](#) 🔑 2029, 2100

A statute which imposes a tax is not unconstitutional per se merely because it is retroactive in its language or in its operation.<sup>1</sup> A taxing scheme may thus be retroactive without being unconstitutional,<sup>2</sup> and the authority of the legislature to impose a retroactive tax is beyond question.<sup>3</sup> The constitutionality of a retroactive tax turns primarily on whether a taxpayer could have reasonably foreseen the enactment and, if the taxpayer could have anticipated the tax, whether the taxpayer would have altered his or her behavior.<sup>4</sup> When a party has been forewarned of a change in a levy or tax, reliance upon the old tax is unreasonable, and retroactive imposition of a tax or fee does not violate due process.<sup>5</sup> Furthermore, the intent to give the taxing provision retroactive operation may need to be either plainly expressed or necessarily implied by the act.<sup>6</sup> Thus, a retroactive tax may run afoul of the constitution if the period of retroactivity is unduly long<sup>7</sup> while the retroactivity provisions of a tax statute will generally be upheld if they are imposed for a short period.<sup>8</sup> The modesty of a retroactive period to remedy an unconstitutional tax law must be assessed under the facts and circumstances of each case.<sup>9</sup> It has been stated generally that the retroactive application of tax laws will be upheld only where such retroactivity is limited to the current tax year; a period of retroactivity longer than the year preceding the legislative session in which the law was enacted would raise serious constitutional issues.<sup>10</sup>

For purposes of the claim that a retroactive statutory amendment deprives a taxpayer of a vested property right without due process, the Department of Revenue must verify or accept the taxpayer's refund claim before vesting can occur; the right does not vest merely by filing a claim.<sup>11</sup>

A retroactive tax measure is unconstitutional only when its effect is peculiarly harsh and oppressive.<sup>12</sup> Determining whether the retroactive application of a tax law offends constitutional limitations requires a balancing of the equities.<sup>13</sup>

On a remand from the United States Supreme Court to a state's highest court in a case in which the Supreme Court has held that the state's highest court must apply retroactively a Supreme Court decision holding a state tax unconstitutional, a State is free to choose which form of relief it will provide so long as that relief satisfies the minimum requirements under the Due Process Clause of the Federal Constitution's 14th Amendment.<sup>14</sup>

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#### Footnotes

- <sup>1</sup> [Replan Development, Inc. v. Department of Housing Preservation and Development of City of New York](#), 70 N.Y.2d 451, 522 N.Y.S.2d 485, 517 N.E.2d 200 (1987).
- <sup>2</sup> [Pabst v. Commissioner of Taxes](#), 136 Vt. 126, 388 A.2d 1181 (1978).
- <sup>3</sup> [Jefferson County Com'n v. Edwards](#), 49 So. 3d 685 (Ala. 2010).
- <sup>4</sup> [Wittenberg v. City of New York](#), 135 A.D.2d 132, 523 N.Y.S.2d 1003 (1st Dep't 1988), appeal granted, order aff'd, 73 N.Y.2d 753, 536 N.Y.S.2d 57, 532 N.E.2d 1285 (1988); [Surgical Laser Technologies, Inc. v. Com., Dept. of Revenue](#), 156 Pa. Commw. 48, 626 A.2d 664 (1993).
- <sup>5</sup> [Litod Paper Stock Corp. v. City of New York](#), 154 A.D.2d 280, 546 N.Y.S.2d 361 (1st Dep't 1989).
- <sup>6</sup> [Menefee Crushed Stone Co., Inc. v. Taylor](#), 760 S.W.2d 223 (Tenn. Ct. App. 1988).
- <sup>7</sup> [U.S. v. Carlton](#), 512 U.S. 26, 114 S. Ct. 2018, 129 L. Ed. 2d 22 (1994); [Scallop Corp. v. Tully](#), 546 F. Supp. 745 (N.D. N.Y. 1982).
- <sup>8</sup> [Moran Towing Corp. v. Urbach](#), 1 A.D.3d 722, 768 N.Y.S.2d 33 (3d Dep't 2003).
- <sup>9</sup> [River Garden Retirement Home v. Franchise Tax Bd.](#), 186 Cal. App. 4th 922, 113 Cal. Rptr. 3d 62 (1st Dist. 2010), review denied, (Nov. 10, 2010); [General Motors Corp. v. Dep't. of Treasury](#), 290 Mich. App. 355, 803 N.W.2d 698 (2010), appeal denied, 489 Mich. 991, 800 N.W.2d 85 (2011) and cert. denied, 132 S. Ct. 1143 (2012).
- <sup>10</sup> [City of Modesto v. National Med, Inc.](#), 128 Cal. App. 4th 518, 27 Cal. Rptr. 3d 215 (5th Dist. 2005).
- <sup>11</sup> [Enterprise Leasing Co. of Phoenix v. Arizona Dept. of Revenue](#), 221 Ariz. 123, 211 P.3d 1 (Ct. App. Div. 1 2008).
- <sup>12</sup> [Ceres One Corp. v. Naperville Tp. Road Dist.](#), 343 Ill. App. 3d 382, 278 Ill. Dec. 179, 797 N.E.2d 1097 (2d Dist. 2003).
- <sup>13</sup> [James Square Associates LP v. Mullen](#), 91 A.D.3d 164, 933 N.Y.S.2d 485 (4th Dep't 2011) (pointing out that while the issue was not a retroactive tax law, the case did involve the alteration of the plaintiffs' eligibility for tax credits, and thus, the retroactive tax law cases were instructive).
- <sup>14</sup> [Harper v. Virginia Dept. of Taxation](#), 509 U.S. 86, 113 S. Ct. 2510, 125 L. Ed. 2d 74 (1993).

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## 71 Am. Jur. 2d State and Local Taxation § 84

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 1. In General

## § 84. Retroactive legislation—Curative acts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3907

West's Key Number Digest, [Statutes](#) 🔑 104, 278.17

West's Key Number Digest, [Taxation](#) 🔑 2028, 2029, 2100

Curative legislation corrects an unintended and unanticipated mistake in the underlying legislation, which went undetected until some time after the original enactment.<sup>1</sup> As such, these statutes are necessarily retroactive in character.<sup>2</sup> However, where a tax statute is unambiguous, the court presumes that a subsequent amendment constitutes a substantive change in the law, not a curative one, and thus will not apply the amendment retroactively.<sup>3</sup>

### Observation:

Ratification of a tax collected without authority is given full retroactivity so long as the retroactivity furthers a legitimate purpose.<sup>4</sup>

It has been generally held that the exercise of this power is subject to the same constitutional limitations as is the exercise of any other legislative power,<sup>5</sup> and from this proposition, the rule evolves that the legislature cannot cure retrospectively what it could not have previously authorized or done prospectively but may, in the absence of constitutional inhibitions, validate by a subsequent curative statute any proceeding which it might have authorized in the first instance.<sup>6</sup> Among the factors involved in deciding if a curative statute can be upheld are whether:

- the provision attempts to change existing legislative policy
- the retrospective application of the statute works substantial injustice
- the retroactive act resulting from the curative act was anticipated at the time of the transaction
- the original defect in authority was inadvertent
- the “repairs” made by the curative statute were “small”<sup>7</sup>

Curative statutes generally are not found to violate due process on retroactivity grounds, and an amendment that explains what the original tax legislation intended does not change the status quo and does not retroactively abolish a right.<sup>8</sup> If a statute is curative or remedial in its nature, it will generally be given the most comprehensive and liberal construction possible.<sup>9</sup> Moreover, where the legislature provides that a tax statute is curative and shall be retroactively applied, the legislature’s intent prevails regardless of any conflicting rule of statutory construction where a vested right is not implicated, and thus, due process is not violated.<sup>10</sup>

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#### Footnotes

- <sup>1</sup> [Honeywell, Inc. v. Minnesota Life and Health Ins. Guar. Ass’n](#), 110 F.3d 547 (8th Cir. 1997); [Johnson v. Edgar](#), 176 Ill. 2d 499, 224 Ill. Dec. 1, 680 N.E.2d 1372 (1997).
- <sup>2</sup> [Am. Jur. 2d, Constitutional Law § 752](#).
- <sup>3</sup> [Sprint Intern. Communications Cor. v. Department of Revenue](#), 154 Wash. App. 926, 226 P.3d 253 (Div. 2 2010), review denied, 169 Wash. 2d 1023, 238 P.3d 503 (2010).
- <sup>4</sup> [Zaber v. City of Dubuque](#), 789 N.W.2d 634 (Iowa 2010) (5½ year retroactive period not violative of due process rights where the ratification of a tax was curative legislation).
- <sup>5</sup> [Graham v. Goodcell](#), 282 U.S. 409, 51 S. Ct. 186, 75 L. Ed. 415 (1931).
- <sup>6</sup> [Straus v. Foxworth](#), 231 U.S. 162, 34 S. Ct. 42, 58 L. Ed. 168 (1913).
- <sup>7</sup> [Tyrone W. v. Danielle R.](#), 129 Md. App. 260, 741 A.2d 553 (1999), judgment aff’d, 359 Md. 396, 754 A.2d 389 (2000).
- <sup>8</sup> [Enterprise Leasing Co. of Phoenix v. Arizona Dept. of Revenue](#), 221 Ariz. 123, 211 P.3d 1 (Ct. App. Div. 1 2008).
- <sup>9</sup> [Sutherland v. C.I.R.](#), T.C. Memo. 2001-8, T.C.M. (RIA) P 2001-008 (2001); [Dallas Cent. Appraisal Dist. v. Sears Roebuck and Co.](#), 2000 WL 1195684 (Tex. App. Dallas 2000).
- <sup>10</sup> [GMAC LLC v. Treasury Dept.](#), 286 Mich. App. 365, 781 N.W.2d 310 (2009), appeal denied, 486 Mich. 961, 782 N.W.2d 770 (2010).

## 71 Am. Jur. 2d State and Local Taxation § 85

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions


##### 1. In General

## § 85. Special or local laws

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Statutes](#)  95(1)

West's Key Number Digest, [Taxation](#)  2100, 2121

### A.L.R. Library

[Validity of statutory classifications based on population—tax statutes, 98 A.L.R.3d 1083](#)

Tax statutes whose operation is confined to one or more, but less than all, of the cities, counties, or other political subdivisions of a State have frequently been treated as local laws within the meaning of constitutional prohibitions of special or local legislation.<sup>1</sup> Special acts or local ordinances that impose taxes that are unauthorized by general law are unconstitutional.<sup>2</sup> Moreover, a state constitution may prohibit the legislature from passing a special law authorizing a local government to impose a non-ad valorem tax.<sup>3</sup> Similarly, legislative enactments that focus on a single tax unit may be unconstitutional under appropriate circumstances.<sup>4</sup> Other courts, however, have found circumstances in which such focused taxes were proper.<sup>5</sup> Thus, for example, when an act of a state's legislature involves the organization, government, and powers of any county, city, town, or regional government, including such powers of legislation, taxation, and assessment, the constitutional authorization of a special act for the organization, government, and powers of any county, city, town, or regional government, including powers of legislation, taxation, and assessment, prevails over the constitutional prohibition against any local, special, or private law in cases involving the assessment and collection of taxes.<sup>6</sup>

Footnotes

- <sup>1</sup> [Monaghan v. Lewis](#), 21 Del. 218, 5 Penne. 218, 59 A. 948 (1905).  
Where the requirement as to population limits its operation to only one county, a state statute establishing a county board of review of tax assessments in counties having a population in excess of 500,000 may properly be held to violate a constitutional provision prohibiting the enactment of a local or special law. [Wayne County Bd. of Review v. Great Lakes Steel Corp.](#), 300 U.S. 29, 57 S. Ct. 329, 81 L. Ed. 485 (1937).
- <sup>2</sup> [Collier County v. State](#), 733 So. 2d 1012 (Fla. 1999).
- <sup>3</sup> [City of Miami v. McGrath](#), 824 So. 2d 143 (Fla. 2002).
- <sup>4</sup> [Horry County v. Horry County Higher Educ. Com'n](#), 306 S.C. 416, 412 S.E.2d 421, 71 Ed. Law Rep. 1229 (1991).
- <sup>5</sup> [Fox v. Rosewell](#), 55 Ill. App. 3d 860, 13 Ill. Dec. 570, 371 N.E.2d 287, 98 A.L.R.3d 1075 (1st Dist. 1977).
- <sup>6</sup> [Alderson v. County Of Alleghany](#), 266 Va. 333, 585 S.E.2d 795 (2003).

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## 71 Am. Jur. 2d State and Local Taxation § 86

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements


##### C. Effect of State Constitutions

##### 1. In General

## § 86. Special or local laws—Operation and effect of constitutional proscription

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2100, 2121

Under some state constitutions, a local or special law may be upheld so long as (1) it does not come within any of the cases enumerated in the provision of the constitution prohibiting certain local and special laws, and (2) a general law could not have been made applicable.<sup>1</sup> Under other constitutions, if a law constitutes a “special law” because it applies to a fixed subclass, then it will be invalidated unless substantial justification is shown for utilization of a special rather than a general law.<sup>2</sup>

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### Footnotes

<sup>1</sup> [Clean Water Coalition v. The M Resort, LLC](#), 255 P.3d 247 (Nev. 2011).

<sup>2</sup> [City of Springfield v. Sprint Spectrum, L.P.](#), 203 S.W.3d 177 (Mo. 2006).

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## 71 Am. Jur. 2d State and Local Taxation § 87

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 1. In General

## § 87. Sufficiency of expression of subject matter in title of act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Statutes](#)  121(1)

The broad principle that the title of a statute is sufficient if the subject of a legislative enactment is so expressed in the title as to give reasonable notice of the contents of the law, and if it affords sufficient warning of the subject,<sup>1</sup> has been applied to tax statutes.<sup>2</sup> The legislature may, if it chooses, adopt a very broad and comprehensive title in a bill, in which case, great liberality will be indulged to hold, for purposes of the constitutional requirement that no bill shall embrace more than one subject, that any subject reasonably germane to such title may be embraced within the body of the bill.<sup>3</sup> When a general title is used, all that is required, for purposes of the constitutional requirement, is rational unity between the general subject and the incidental subjects also included in the title.<sup>4</sup> Thus, an act entitled “An act relating to county government and the reduction of the rate of county taxation” is sufficient although the statute contains sections authorizing the levy of extra taxes to pay emergency loans made by county commissioners.<sup>5</sup> Similarly, a statute entitled “An Act Concerning Taxation” is not invalid because it contains provision for the review of municipal tax levies by the state board of tax commissioners.<sup>6</sup>

The converse principle, that where the title of a statute imports one subject and the body of the act shows a different subject to be its purpose, the title is misleading and the act is unconstitutional, has also been used in connection with revenue measures.<sup>7</sup> Thus, a state initiative limiting motor vehicle license fees and other taxes violated the constitution's subject in title requirement by failing to provide notice that “taxes” referred to in a ballot title's question included fees and charges not traditionally or commonly considered to be taxes.<sup>8</sup> Similarly, a statutory title relating to the duties and powers of state and county boards of assessment does not cover matter empowering boards of equalization to place delinquent property on the tax list and providing special rules of evidence for that class of cases.<sup>9</sup>

Under the general principle that the title of a statute need not disclose the means and instrumentalities provided in the body of the act for accomplishing its purpose, it has been held that the tax features of a statute whose primary purpose is the establishment or maintenance of some public project or undertaking, which is expressed in the title, are not invalid if not so



expressed where the tax is imposed merely to provide the necessary funds for the project or undertaking in question.<sup>10</sup> The same result has been reached where several different taxes are imposed in a single statute to raise funds for the same purpose.<sup>11</sup> The general rule with respect to the specificity with which the subject matter of a statute must be expressed in its title that so long as the title of an act is not misleading or deceptive but fairly expresses the general subject or object of the law, the mere generality thereof is not objectionable has been applied to tax statutes.<sup>12</sup> Under the general rule that where terms used in a statute are susceptible of more than one meaning, that meaning will be adopted which would render the statute in compliance with the constitutional provision under consideration,<sup>13</sup> it has been held that a statutory title referring to a tax upon “persons” engaged in the business of selling water, gas, or electricity is sufficient to include provisions of the act imposing the tax on municipal corporations selling the commodities mentioned.<sup>14</sup>

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#### Footnotes

- <sup>1</sup> Am. Jur. 2d, Statutes § 50.
- <sup>2</sup> *International Shoe Co. v. Shartel*, 279 U.S. 429, 49 S. Ct. 380, 73 L. Ed. 781 (1929).
- <sup>3</sup> *Amalgamated Transit Union Local 587 v. State*, 142 Wash. 2d 183, 11 P.3d 762 (2000), as amended, (Nov. 27, 2000) and opinion corrected, 27 P.3d 608 (Wash. 2001).
- <sup>4</sup> *Amalgamated Transit Union Local 587 v. State*, 142 Wash. 2d 183, 11 P.3d 762 (2000), as amended, (Nov. 27, 2000) and opinion corrected, 27 P.3d 608 (Wash. 2001).
- <sup>5</sup> *First Nat. Bank v. Nye County*, 38 Nev. 123, 145 P. 932 (1914).
- <sup>6</sup> *Zoercher v. Agler*, 202 Ind. 214, 172 N.E. 186, 70 A.L.R. 1232 (1930).
- <sup>7</sup> *Malin v. La Moure County*, 27 N.D. 140, 145 N.W. 582 (1914).
- <sup>8</sup> *Amalgamated Transit Union Local 587 v. State*, 142 Wash. 2d 183, 11 P.3d 762 (2000), as amended, (Nov. 27, 2000) and opinion corrected, 27 P.3d 608 (Wash. 2001).
- <sup>9</sup> *Pierson v. Minnehaha County*, 28 S.D. 534, 134 N.W. 212 (1912).
- <sup>10</sup> *Wilkinson v. Lord*, 85 Neb. 136, 122 N.W. 699 (1909).
- <sup>11</sup> *In re Hunter's Estate*, 97 Colo. 279, 49 P.2d 1009, 101 A.L.R. 1202 (1935).
- <sup>12</sup> *Rosenbloom v. State*, 64 Neb. 342, 89 N.W. 1053 (1902).
- <sup>13</sup> Am. Jur. 2d, Statutes § 50.
- <sup>14</sup> *City of Chicago v. Ames*, 365 Ill. 529, 7 N.E.2d 294, 109 A.L.R. 1509 (1937).

## 71 Am. Jur. 2d State and Local Taxation § 88

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 1. In General

### § 88. Sufficiency of expression of subject matter in title of act—Plurality of subjects

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Statutes](#)  107(6)

Under the general principle that a legislature violates the state constitution's single subject rule only when it includes within one act provisions that by no fair interpretation have any natural and logical connection to a single subject,<sup>1</sup> it is clear that a statute is not invalid because it combines with matters relating to the levy, assessment, or collection of taxes matters which, in terms at least, relate to other subjects where all of such matters are germane to the general subject or object of the legislation.<sup>2</sup> For purposes of the constitutional requirement that no law embrace more than one object, which shall be expressed in its title, the "object" of a law is defined as its general purpose or aim.<sup>3</sup> Accordingly, all the provisions of a legislative enactment both amending a Video Gaming Act to provide further safeguards against potential abuses and amending a Liquor Control Act to increase the tax rate for alcoholic cider beverages may be deemed to be related to capital projects and thus do not violate the single subject requirement.<sup>4</sup> Moreover, a statute relating solely to the taxing process is not invalid as duplicitous because it combines matters relating to various phases of that process,<sup>5</sup> particularly where the matter dealing with one phase of the process is merely incidental to the main aspect dealt with by the legislature.<sup>6</sup> On the other hand, an act containing sections relating to sales tax exemptions for energy efficient products, a sales tax holiday for firearms, and regulation of fuel blending violates the one subject rule of a state constitution.<sup>7</sup> Similarly, legislation entitled "An Act in relation to government regulation," which amended an income tax act to significantly increase the penalty for a first-time offense of willful and fraudulent acts, but which also included such matters as creating a council to study issues relating to geographic information management technology and creating an authority which could issue bonds to support and develop university-related research parks, violates the constitutional single-subject rule.<sup>8</sup>

#### Observation:

The purpose of the constitutional requirement that legislation embrace only one subject, which must be expressed in its title, is to

prevent from combining into one bill several diverse measures which have no common basis and which are combined together out of fear that separately each could not receive a favorable vote on its merits, to prevent unintentional and unknowing passage of provisions inserted in a bill for which the title gives no information, to fairly apprise the public of matters which are contained in various bills and to prevent fraud and deception as to matters passed by the legislature, and to prevent the dilution of the governor's veto power that would result if legislation is saddled with irrelevant riders opposed by the governor.<sup>9</sup>

To conclude that an act violates the state constitutional one-subject rule, a court must determine that the act includes a disunity of subject matter such that there is no discernable practical, rational, or legitimate reason for combining the provisions in one act.<sup>10</sup>

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#### Footnotes

- <sup>1</sup> [Am. Jur. 2d, Statutes § 55.](#)
- <sup>2</sup> [Northern Counties Investment Trust v. Sears, 30 Or. 388, 41 P. 931 \(1895\).](#)
- <sup>3</sup> [General Motors Corp. v. Dep't. of Treasury, 290 Mich. App. 355, 803 N.W.2d 698 \(2010\), appeal denied, 489 Mich. 991, 800 N.W.2d 85 \(2011\) and cert. denied, 132 S. Ct. 1143 \(2012\).](#)
- <sup>4</sup> [Wirtz v. Quinn, 2011 IL 111903, 352 Ill. Dec. 218, 953 N.E.2d 899 \(Ill. 2011\).](#)
- <sup>5</sup> [State ex rel. Dowling v. Butts, 111 Fla. 630, 149 So. 746, 89 A.L.R. 946 \(1933\).](#)
- <sup>6</sup> [Love v. Silverthorn, 1940 OK 103, 187 Okla. 114, 101 P.2d 254, 129 A.L.R. 676 \(1940\).](#)
- <sup>7</sup> [American Petroleum Institute v. South Carolina Dept. of Revenue, 382 S.C. 572, 677 S.E.2d 16 \(2009\).](#)
- <sup>8</sup> [People v. Olender, 222 Ill. 2d 123, 305 Ill. Dec. 1, 854 N.E.2d 593 \(2005\).](#)
- <sup>9</sup> [Amalgamated Transit Union Local 587 v. State, 142 Wash. 2d 183, 11 P.3d 762 \(2000\), as amended, \(Nov. 27, 2000\) and opinion corrected, 27 P.3d 608 \(Wash. 2001\); Appalachian Power Co. v. State Tax Dept. of West Virginia, 195 W. Va. 573, 466 S.E.2d 424 \(1995\).](#)
- <sup>10</sup> [Riverside v. State, 190 Ohio App. 3d 765, 2010-Ohio-5868, 944 N.E.2d 281 \(10th Dist. Franklin County 2010\), appeal not allowed, 128 Ohio St. 3d 1447, 2011-Ohio-1618, 944 N.E.2d 696 \(2011\) \(statute that precluded a city from taxing the income of nonresident civilian employees and contractors working at Air Force base located in city properly related to the single subject of state appropriations\).](#)

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions


##### 1. In General

## § 89. Statement of tax and object thereof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Statutes](#)  121(1)

West's Key Number Digest, [Taxation](#)  2100

State constitutional provisions may require a tax law to state the tax,<sup>1</sup> the purpose of the tax, and the object to which the tax shall be applied to prevent the diversion of taxes which have been levied or collected or which are already on hand and appropriated to other purposes.<sup>2</sup> The term “object” as used in a constitutional provision requiring every law imposing a tax to state distinctly the object of the tax refers to the objective or purpose of the tax rather than the item being taxed.<sup>3</sup>

### Observation:

Under such a constitutional provision, it has been held that amending the tax statute to provide a different use for taxes to be levied in future does not violate such a section.<sup>4</sup>

Nothing in a state constitutional provision stating that every act of the legislature levying a tax must state the special object to which it is to be applied and shall be applied to no other purpose suggests that the provision is directed at the governor and his or her constitutional duty to effect the necessary economies in state expenditures; rather, the special objects language is directed at the legislature.<sup>5</sup>

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Footnotes

- <sup>1</sup> Com. v. Brown, 91 Va. 762, 21 S.E. 357 (1895).
- <sup>2</sup> Meierhenry v. City of Huron, 354 N.W.2d 171 (S.D. 1984).
- <sup>3</sup> Wilderness World, Inc. v. Department of Revenue State of Arizona, 182 Ariz. 196, 895 P.2d 108 (1995), as amended on denial of reconsideration, (June 9, 1995).
- <sup>4</sup> Meierhenry v. City of Huron, 354 N.W.2d 171 (S.D. 1984).
- <sup>5</sup> County of Cabarrus v. Tolson, 169 N.C. App. 636, 610 S.E.2d 443 (2005).

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 2. Taxation for Local Purposes

## § 90. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Municipal Corporations](#) 🔑 957(2)

West's Key Number Digest, [States](#) 🔑 119

West's Key Number Digest, [Taxation](#) 🔑 2100

State constitutions may contain limitations on the power of the State to impose taxes for local corporate purposes. In some states, the prohibition is specific. In other states, the legislature is authorized to invest the corporate authorities of counties, cities, towns, etc., with the power to levy taxes for corporate purposes. These provisions are usually given the same effect, in limiting the power of the State to tax, as are the specific prohibitions.<sup>1</sup> Furthermore, the effect of a provision that the legislature may vest local authorities with the power to levy taxes for corporate purposes is to limit the legislature to empowering such authorities to levy taxes for local purposes only.<sup>2</sup>

The State itself cannot levy a local property tax although the State can require the local government to pay its share of a dual funding system.<sup>3</sup>

### Caution:

That a state real property tax act is labeled a state tax and that the tax is to be collected by the State and remitted to the cities and school districts through the device of state aid did not make it a state tax, under the circumstances of the case, thus exempting it from the limitations imposed by the state constitution, since it had the same purpose and effect as an emergency city and school district relief act, concededly a measure designed to permit local taxes.<sup>4</sup>

**Observation:**

A statute generally prohibiting local governmental bodies from imposing taxes or fees on development applies only to taxes, fees, or charges imposed by local political subdivisions, not the State.<sup>5</sup>

**CUMULATIVE SUPPLEMENT****Cases:**

State legislature's delegation of power to tax to city board of education did not violate due process clause of Illinois Constitution, notwithstanding claim by city residents that such delegation violated due process because board was unelected and residents were thus subjected to taxation without any representation through legislative body; legislature had, on two recent occasions, amended statute establishing board's taxing authority to increase amount of taxes that board could levy, in light of financial problems that board was facing, and such amendments showed that board's taxing authority was under scrutiny and control of legislative body, namely, the state legislature. [Ill. Const. art. 1, § 2](#); [105 Ill. Comp. Stat. Ann. 5/34-53](#). [Quinn v. Board of Education of City of Chicago](#), 2018 IL App (1st) 170834, 423 Ill. Dec. 301, 105 N.E.3d 106 (App. Ct. 1st Dist. 2018).

**[END OF SUPPLEMENT]**

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**Footnotes**

- <sup>1</sup> [Northwestern Imp. Co. v. Henneford](#), 184 Wash. 502, 51 P.2d 1083 (1935).
- <sup>2</sup> [Weyerhaeuser Timber Co. v. Roessler](#), 2 Wash. 2d 304, 97 P.2d 1070, 126 A.L.R. 882 (1940).
- <sup>3</sup> [Mesa County Bd. of County Com'rs v. State](#), 203 P.3d 519, 242 Ed. Law Rep. 448 (Colo. 2009).
- <sup>4</sup> [Bethlehem Steel Corp. v. Board of Ed. of City School Dist. of Lackawanna](#), 61 A.D.2d 147, 402 N.Y.S.2d 655 (4th Dep't 1978), judgment [aff'd](#), 44 N.Y.2d 831, 406 N.Y.S.2d 752, 378 N.E.2d 115 (1978).
- <sup>5</sup> [Citizens for Rational Shoreline Planning v. Whatcom County](#), 172 Wash. 2d 384, 258 P.3d 36 (2011).

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 2. Taxation for Local Purposes

## § 91. Who are “corporate authorities”

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West’s Key Number Digest

West’s Key Number Digest, [Taxation](#)  2028

Since it appears that under constitutional provisions authorizing or requiring the legislature to vest the taxing power for local purposes in the “corporate” or “proper” authorities of local governmental subdivisions, the legislature has no authority to delegate the power to tax to any others than the corporate or proper authorities of the subdivisions to be taxed, in the absence of some provision to the contrary in the constitution, it is necessary to determine what officers, boards, or other agencies come within the meaning of such terms as used in governing constitutional provisions.<sup>1</sup> Certain propositions of a general nature with respect to the question of who constitute “corporate authorities” have been laid down by the courts. Thus, it has been said that the term in question refers to the legislative body of the local subdivision in whom it is sought to vest the taxing power,<sup>2</sup> that it means that those municipal officers who are either directly elected by the inhabitants of the local subdivision or are appointed in some mode to which the people have given their consent,<sup>3</sup> and that it refers to county, city, town, or other municipal officers as distinguished from state officers.<sup>4</sup>

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#### Footnotes

<sup>1</sup> [State v. Edwards](#), 42 Mont. 135, 111 P. 734 (1910).

<sup>2</sup> [State v. Edwards](#), 42 Mont. 135, 111 P. 734 (1910).

<sup>3</sup> [State v. Redd](#), 166 Wash. 132, 6 P.2d 619 (1932).

<sup>4</sup> [State v. Edwards](#), 42 Mont. 135, 111 P. 734 (1910).



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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 3. Limitations of Rate or Amount

## § 92. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2161

State constitutions frequently contain provisions limiting the rate at which taxes may be levied.<sup>1</sup> For example, the purpose of an amendment to a state constitution to limit the annual increase in property tax assessments is to limit tax increases on property as long as it remains owned by the same party even though the actual market value of the property may have risen at a greater rate.<sup>2</sup> Constitutional limitations on rates, by their terms, may be applicable to state taxes or to taxes imposed by political subdivisions, or different limitations upon state taxes and local taxes may be imposed in the same constitution. For instance, it has been held that the term “assessed valuation” of taxable property in such a constitutional tax limitation means the local assessment as approved or charged and corrected through the statutory process of county equalization by the board of supervisors and, on appeal, by the state tax commission and not the original assessment by the city assessor and the city board of review.<sup>3</sup>

Courts generally accord great weight to the statutes that the legislature has passed, as well as state board of equalization regulations, to implement a constitutional provision adopted by voters and limiting the ad valorem tax on real property to a percentage of the property's full cash value.<sup>4</sup>

### Caution:

A court has ruled that a state constitutional article limiting tax rate levies and providing for the setting of tax rates and additional annual ad valorem tax by counties was not a grant of exclusive authority to commissioners' courts to set property tax rates so as to preclude the legislature from removing by statute the commissioners courts' authority to set property tax rates. Rather, the constitutional article was a limitation upon the counties as to ad valorem taxes that they were authorized to levy, and the article

thus did not conflict with a Tax Code provision authorizing an election to roll back the tax rate previously set by the commissioners' court.<sup>5</sup>

In determining whether a political subdivision has violated a constitutional amendment that imposes limitations on a political subdivision's ability to increase a tax, the constitution's prohibition is measured against the tax levy imposed by the political subdivision.<sup>6</sup>

Provisions of the constitution and statutes of a state requiring the approval of 60% of the qualified voters of a political subdivision of the State in order to increase tax rates beyond those established by the state constitution do not violate the Equal Protection Clause or any other provision of the United States Constitution.<sup>7</sup> Moreover, a property tax extension limitation law requires that a taxing district levying a new rate submit the proposed new rate to a direct referendum regardless of whether the statute authorizing the rate was adopted before or after the effective date of the limitation law.<sup>8</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

City's transfer of funds from electric utility reserve fund to general fund did not constitute a tax increase, as would require public vote, despite argument that transfer resulted in change in mathematical equation in way city calculated the electric general fund transfer, due to city's incorporation of additional reserve money into the "gross operating revenues" portion of tax formula, where transfer did not increase the amount levied on city ratepayers. [Cal. Const. art. XIII C, § 2](#); [Cal. Gov't Code § 53750](#). [Webb v. City of Riverside](#), 23 Cal. App. 5th 244, 232 Cal. Rptr. 3d 761 (4th Dist. 2018).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Cheeseman v. Dell](#), 310 Mich. 108, 16 N.W.2d 682, 156 A.L.R. 589 (1944).
- <sup>2</sup> [Klooster v. City of Charlevoix](#), 488 Mich. 289, 795 N.W.2d 578 (2011).
- <sup>3</sup> [Cheeseman v. Dell](#), 310 Mich. 108, 16 N.W.2d 682, 156 A.L.R. 589 (1944).
- <sup>4</sup> [Steinhart v. County of Los Angeles](#), 47 Cal. 4th 1298, 104 Cal. Rptr. 3d 195, 223 P.3d 57 (2010).
- <sup>5</sup> [Vinson v. Burgess](#), 773 S.W.2d 263 (Tex. 1989).
- <sup>6</sup> [Rohrer v. Emmons](#), 289 S.W.3d 600 (Mo. Ct. App. E.D. 2009).
- <sup>7</sup> [Gordon v. Lance](#), 403 U.S. 1, 91 S. Ct. 1889, 29 L. Ed. 2d 273 (1971).
- <sup>8</sup> [Acme Markets, Inc. v. Callanan](#), 236 Ill. 2d 29, 337 Ill. Dec. 867, 923 N.E.2d 718 (2009).

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Works.

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 3. Limitations of Rate or Amount

## § 93. Operation and effect

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Counties](#)  190.2

West's Key Number Digest, [Taxation](#)  2161

Where a statute provides for a tax without designating the rate thereof, it must be construed as meaning that the tax shall be levied within the constitutional limit.<sup>1</sup> However, a statute which attempts to impose a tax at a rate in excess of that provided in an applicable constitutional provision of the kind under consideration is invalid<sup>2</sup> at least to the extent of the excess.<sup>3</sup> Furthermore, a constitutional provision limiting the rate of taxation to a designated percentage of the valuation of the taxable property in the state by necessary implication forbids the establishment by the legislature of a basis of assessment in excess of 100% of the actual value of such property but does not prevent the legislature from requiring that property be valued for purposes of taxation at a designated percent, less than 100, of its cash value.<sup>4</sup>

A constitutional provision that limits increases in the maximum assessed value of property to 3% annually does not limit the amount by which the assessed value may increase when the assessed value of property is less than its maximum assessed value.<sup>5</sup>

The term “tax valuation,” in the Organic Act of Guam’s proscription of public indebtedness exceeding a certain percentage per year of the “aggregate tax valuation of the property in Guam,” refers to the assessed valuation, i.e., the valuation to which the tax rate is applied, not to the appraised valuation, i.e., market value; market value does not necessarily relate to taxation.<sup>6</sup>

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### Footnotes

<sup>1</sup> [Brannon v. County Court](#), 33 W. Va. 789, 11 S.E. 34 (1890).

<sup>2</sup> [Eliasberg Bros. Mercantile Co. v. Grimes](#), 204 Ala. 492, 86 So. 56, 11 A.L.R. 300 (1920).

<sup>3</sup> [Wells, Fargo & Co.'s Express v. Crawford County](#), 63 Ark. 576, 40 S.W. 710 (1897).

<sup>4</sup> [State v. Birmingham Southern R. Co.](#), 182 Ala. 475, 62 So. 77 (1913) (upholding statute requiring that the taxable property of the State should be assessed for tax purposes at 60% of its fair and reasonable cash value).

<sup>5</sup> [Gall v. Department of Revenue](#), 343 Or. 293, 170 P.3d 558 (2007).

<sup>6</sup> [Limtiaco v. Camacho](#), 549 U.S. 483, 127 S. Ct. 1413, 167 L. Ed. 2d 212 (2007).

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## 71 Am. Jur. 2d State and Local Taxation § 94

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 3. Limitations of Rate or Amount

## § 94. Applicability of provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Counties](#)  190.2

West's Key Number Digest, [Taxation](#)  2161

The fact that a particular tax is imposed at a rate which is mathematically in excess of the rate permitted by a governing constitutional provision does not, by itself, render the tax invalid since the provisions in question are not, or at least may not be, applicable to all taxes or in all circumstances. Thus, the view has been taken that provisions of the kind in question are applicable only to property taxes imposed ad valorem.<sup>1</sup> Whether a particular constitutional limitation as to the tax rate is applicable to various kinds of taxes is, in the last analysis, determined by the proper interpretation of the precise wording of the limitation.<sup>2</sup>

Relief of those unable to support themselves because of the prevalence of widespread unemployment was a “municipal purpose” within the meaning of a constitutional provision excepting from the normal rate limitation, applicable to municipal taxes, taxes of a particular municipality levied for “municipal purposes.”<sup>3</sup> A proviso to a constitutional limitation on the rate of county taxes allowing the levy of additional taxes not to exceed a designated percentage to pay indebtedness incurred for the erection of necessary public buildings, bridges, or roads has been held inapplicable to counties whose indebtedness exceeded the debt limitation imposed upon counties by another section of the constitution.<sup>4</sup>

The view has been expressed that a constitutional limitation on the rate of municipal taxation is applicable to a tax levied to pay municipal bonds authorized prior to the adoption of the limitation but not sold or delivered until after such adoption.<sup>5</sup>

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### Footnotes

<sup>1</sup> State ex rel. Porterie v. H.L. Hunt, Inc., 182 La. 1073, 162 So. 777, 103 A.L.R. 9 (1935).

<sup>2</sup> Board of Com'rs of Tuberculosis Hospital Dist. of Buchanan County v. Peter, 253 Mo. 520, 161 S.W. 1155 (1913).

<sup>3</sup> Jennings v. City of St. Louis, 332 Mo. 173, 58 S.W.2d 979, 87 A.L.R. 365 (1933).

<sup>4</sup> O'Rear v. Sartain, 193 Ala. 275, 69 So. 554 (1915).

<sup>5</sup> Zimmerman v. Town of New Martinsville, 117 W. Va. 752, 188 S.E. 124, 109 A.L.R. 958 (1936).

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## 71 Am. Jur. 2d State and Local Taxation § 95

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 4. Delegation of Powers

## § 95. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2400, 2429

West's Key Number Digest, [Taxation](#) 🔑 2016, 2076, 2414

### A.L.R. Library

[Constitutionality, construction, and application of state and local public-utility-gross-receipts-tax statutes—modern cases, 58 A.L.R.5th 187](#)

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 10](#) (Petition or application—For writ of mandamus—To compel assessment and levy of tax at full rate approved by voters)

The broad proposition that the power of taxation may not be delegated to others by the legislature is well recognized.<sup>1</sup> It is, however, subject to a number of exceptions, modifications, and qualifications. In the first place, the authority to vest the power to tax in local governmental agencies is frequently granted and regulated by express constitutional provisions.<sup>2</sup> Apart from these, there is a recognized exception to the rule in the case of the political subdivisions of the State, and the power of the legislature to authorize municipal corporations to levy taxes under the proper circumstances has been exercised for so

long a time that its existence is not open to dispute.<sup>3</sup> Furthermore, it is recognized that certain aspects of the taxing process are not legislative in the sense that they may not be delegated to other governmental agencies, or even to individuals, if, in making such delegation, the legislature retains sufficient and proper control over those elements of the taxing function which are nondelegable.<sup>4</sup> Thus, a distinction is drawn between the elements that enter into the imposition of a tax and the ministerial and administrative steps taken for its assessment and collection, the latter being delegable, the former not.<sup>5</sup> In light of this distinction, a state legislature cannot delegate to an administrative board the power to determine the rate of taxation or to say whether or not taxes shall be collected at this or that rate.<sup>6</sup> Moreover, the legislature's broad power to levy taxes generally may not be delegated to ministerial officers or to another department of state government,<sup>7</sup> and public officials have no taxing power except that which is delegated to them by the legislature.<sup>8</sup>

The legislature may, however, delegate incidents of taxing power, such as the functions of computation, appraisal, and adjustment, to appointive officials without running afoul of the proscription against delegation of the power itself thereto.<sup>9</sup> Accordingly, if the legislature provides constitutionally sufficient standards for the state department of revenue to implement an invoice requirement in administering a fuel tax, such delegation is constitutional.<sup>10</sup> Moreover, the legislature's delegating discretion to the state secretary of revenue to force combination of entities on a finding that a corporate report does not disclose true earnings in the state is permissible as it would be virtually impossible for the legislature to define all possible accounting and business configurations by which taxpayers endeavor to minimize taxes payable.<sup>11</sup>

Delegation of the taxing power requires a statute<sup>12</sup> or express legislative authority.<sup>13</sup>

The validity of a tax statute in the light of the contention that it operates as an unwarranted delegation of the legislative power to tax may be upheld on the theory that, properly construed, it contains no delegation of power.<sup>14</sup> Thus, a statute authorizing the state insurance commissioner to place insurance upon the buildings of the State's political subdivisions and require payment by them of the necessary premiums has been held not to be invalid as delegating the power to tax to the commissioner since, the statute in no way authorizing the commissioner to levy a tax to discharge the obligation to pay premiums, the power to levy taxes was in no manner changed.<sup>15</sup>

Any taxing power entrusted to a local government can be revoked or modified at the direction of the legislature.<sup>16</sup>

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#### Footnotes

- <sup>1</sup> [Yonkers Racing Corp. v. State](#), 131 A.D.2d 565, 516 N.Y.S.2d 283 (2d Dep't 1987); [Rocky Mountain Oil and Gas Ass'n v. State Bd. of Equalization](#), 749 P.2d 221 (Wyo. 1987).
- <sup>2</sup> §§ 90, 91.
- <sup>3</sup> § 97.
- <sup>4</sup> [Gautier v. Ditmar](#), 204 N.Y. 20, 97 N.E. 464 (1912); [Berdahl v. Gillis](#), 81 S.D. 436, 136 N.W.2d 633 (1965).
- <sup>5</sup> [Gautier v. Ditmar](#), 204 N.Y. 20, 97 N.E. 464 (1912).
- <sup>6</sup> [State v. State Board of Examiners](#), 40 Mont. 59, 104 P. 1055 (1909).
- <sup>7</sup> [Warren County Community College v. Warren County Bd. of Chosen Freeholders](#), 176 N.J. 432, 824 A.2d 1073, 177 Ed. Law Rep. 1153 (2003).  
A state's department of revenue has no power to impose a new tax or to set tax policy. [Huber v. Colorado Mining Ass'n](#), 264 P.3d 884 (Colo. 2011).
- <sup>8</sup> [Millennium Park Joint Venture, LLC v. Houlihan](#), 241 Ill. 2d 281, 349 Ill. Dec. 898, 948 N.E.2d 1 (2010).
- <sup>9</sup> [Meadowlands Regional Development Agency v. State](#), 112 N.J. Super. 89, 270 A.2d 418 (Ch. Div. 1970), judgment *aff'd*, 63 N.J. 35, 304 A.2d 545 (1973).

- <sup>10</sup> By Lo Oil Co. v. Department of Treasury, 267 Mich. App. 19, 703 N.W.2d 822 (2005).
- <sup>11</sup> Wal-Mart Stores East, Inc. v. Hinton, 197 N.C. App. 30, 676 S.E.2d 634 (2009).
- <sup>12</sup> Bellsouth Telecommunications, Inc. v. Cobb County, 277 Ga. 314, 588 S.E.2d 704 (2003).
- <sup>13</sup> In re Fabius River Drainage Dist., 35 S.W.3d 473 (Mo. Ct. App. E.D. 2000) (disapproved of on other grounds by, Riverside-Quindaro Bend Levee Dist. v. Intercontinental Engineering Mfg. Corp., 121 S.W.3d 531 (Mo. 2003)).
- <sup>14</sup> Blume v. Crawford County, 217 Iowa 545, 250 N.W. 733, 92 A.L.R. 757 (1933).
- <sup>15</sup> Minot Special School Dist. No. 1 v. Olsness, 53 N.D. 683, 208 N.W. 968, 45 A.L.R. 1337 (1926).
- <sup>16</sup> Horseshoe Entertainment v. Bossier Parish Police Jury, 714 So. 2d 920 (La. Ct. App. 2d Cir. 1998), writ denied, 728 So. 2d 392 (La. 1998).

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 4. Delegation of Powers

## § 96. Legislatures of other states

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2016, 2076

### A.L.R. Library

[Construction, application, and operation of state "retaliatory" statutes imposing special taxes or fees on foreign insurers doing business with the state, 30 A.L.R.4th 873](#)

The courts have rejected the contention that statutes imposing taxes on foreign corporations doing business in the state and providing, in effect, that if a greater tax is exacted in another state on corporations organized in the taxing state and doing business in such other state, those corporations organized in the latter state and doing business in the taxing state should be subject to the same tax as is exacted in the other state are invalid as a vesting of legislative power in another state legislature by the legislature of the taxing state.<sup>1</sup>

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### Footnotes

<sup>1</sup> [Gallagher v. Motors Ins. Corp.](#), 605 So. 2d 62 (Fla. 1992); [Metropolitan Life Ins. Co. v. Insurance Com'r of State of Md.](#), 58 Md. App. 457, 473 A.2d 933 (1984).

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## 71 Am. Jur. 2d State and Local Taxation § 97

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

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## § 97. Political subdivisions

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### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2434 to 2440

West's Key Number Digest, [Taxation](#)  2016, 2076, 2416

Although generally the sovereign power of taxation is incapable of delegation,<sup>1</sup> there is a recognized exception to this rule for political subdivisions of the State, and the power of the legislature to authorize municipal corporations to levy taxes has been exercised for so long a time that its existence is not open to dispute.<sup>2</sup> Nevertheless, a municipal corporation's authority to tax must be delegated by the state legislature,<sup>3</sup> and indeed, a State may legally refuse to grant taxing power to its municipalities.<sup>4</sup> More specifically, the power of taxation lies solely in the legislative body acting under the aegis of the constitution, and absent a grant or a delegation of the power to tax from the legislature, no municipality has any power or authority to levy, assess, or collect taxes.<sup>5</sup> The State, having the power to tax, may delegate this power to a municipality.<sup>6</sup> Such delegation is kept within defined lines, with supervisory control always vested in elective bodies<sup>7</sup> and the taxing power of the subdivisions narrowly drawn.<sup>8</sup> Different reasons have been advanced for this exception. For instance, it has been stated that municipalities are public corporations created by the government for political purposes and invested with subordinate legislative powers for local purposes connected with the public good; to carry out these objects of local government, there must be money and hence the necessity of taxation for the purpose.<sup>9</sup> It has also been stated that the power to levy taxes at the local level may be delegated to political subdivisions to defray local costs and expenses<sup>10</sup> on the principle that for local purposes, the local authorities are the representatives of the people.<sup>11</sup> Furthermore, it has been stated that the delegation of power to such local units of government possessing a legislative body chosen by the people does not actually remove the important subject of taxation from the control of the people. This process maintains in a manner the basic institution of popular representation, one of the attributes of our lesser units of government.<sup>12</sup> Thus, it has been ruled that a state legislature may not delegate the unrestricted power of taxation to an appointive body<sup>13</sup> or an unelected body, such as a regional transportation authority.<sup>14</sup> However, even where some of a monorail authority's board members are appointed rather than elected, if the legislature provided the necessary guidelines defining what was to be done and properly identified the entity that was to accomplish it, and multiple procedural safeguards existed to control arbitrary administrative action and administrative abuse of discretionary

power, authorization of a city monorail authority to levy and collect a motor vehicle excise is not unconstitutional.<sup>15</sup>

A legislature may generally delegate powers without violating the separation of powers principle if it provided guidelines and standards for the body to whom the power is delegated.<sup>16</sup> It has also been held constitutionally permissible for the legislature to delegate taxing authority to municipal corporations with appointed board members provided that certain standards or guidelines are provided and procedural safeguards exist; under one state's two-part test, the legislature first must provide standards or guidelines which define in general terms what is to be done and identify the entity which is to accomplish it, and second, procedural safeguards must exist to control arbitrary administrative action and any administrative abuse of discretionary power.<sup>17</sup>

Where the legislature delegates the right to tax to a political subdivision, the grant of such right must be strictly construed and may not be extended by implication.<sup>18</sup> Thus, a city cannot use a city ordinance to obtain greater taxing ability than the legislature has delegated it.<sup>19</sup> Where the legislature delegates the imposition of a tax, the voters' rights are paramount;<sup>20</sup> doubts regarding the existence of the right to tax are resolved in favor of the taxpayer.<sup>21</sup>

In some states, schools districts and their governing boards are considered political subdivisions with a power to tax,<sup>22</sup> as well as counties;<sup>23</sup> boards of county commissioners;<sup>24</sup> boroughs;<sup>25</sup> villages;<sup>26</sup> home-rule town councils;<sup>27</sup> district corporations, such as fire districts and certain conservation districts;<sup>28</sup> a city monorail authority;<sup>29</sup> and cities.<sup>30</sup> However, in other states, courts have ruled that a board with the authority to manage pension funds,<sup>31</sup> a state highway commission,<sup>32</sup> a housing authority,<sup>33</sup> library district trustees,<sup>34</sup> a county hospital authority,<sup>35</sup> an appointed county board of education,<sup>36</sup> and industrial development authorities<sup>37</sup> are not political subdivisions.

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#### Footnotes

- <sup>1</sup> § 95.
- <sup>2</sup> *Bradley v. City of Richmond*, 227 U.S. 477, 33 S. Ct. 318, 57 L. Ed. 603 (1913).
- <sup>3</sup> *Thompson v. City of Altoona Code Appeals Board*, 934 A.2d 130 (Pa. Commw. Ct. 2007); *Vonage America, Inc. v. City of Seattle*, 152 Wash. App. 12, 216 P.3d 1029 (Div. 1 2009).
- <sup>4</sup> *Banner v. U.S.*, 303 F. Supp. 2d 1 (D.D.C. 2004), judgment aff'd, 428 F.3d 303 (D.C. Cir. 2005).
- <sup>5</sup> *Collier County v. State*, 733 So. 2d 1012 (Fla. 1999); *Thompson v. City of Altoona Code Appeals Board*, 934 A.2d 130 (Pa. Commw. Ct. 2007).
- <sup>6</sup> *Collier County v. State*, 733 So. 2d 1012 (Fla. 1999); *Community Telecable of Seattle, Inc. v. City of Seattle, Dept. of Executive Admin.*, 164 Wash. 2d 35, 186 P.3d 1032 (2008).
- <sup>7</sup> *Wilson v. School Dist. of Philadelphia*, 328 Pa. 225, 195 A. 90, 113 A.L.R. 1401 (1937).
- <sup>8</sup> *Witzenburger v. State ex rel. Wyoming Community Development Authority*, 575 P.2d 1100 (Wyo. 1978).
- <sup>9</sup> *Zoercher v. Agler*, 202 Ind. 214, 172 N.E. 186, 70 A.L.R. 1232 (1930); *Wilson v. School Dist. of Philadelphia*, 328 Pa. 225, 195 A. 90, 113 A.L.R. 1401 (1937).
- <sup>10</sup> *Praxair Technology, Inc. v. Director, Div. of Taxation*, 201 N.J. 126, 988 A.2d 92 (2009).
- <sup>11</sup> *Warren County Community College v. Warren County Bd. of Chosen Freeholders*, 176 N.J. 432, 824 A.2d 1073, 177 Ed. Law Rep. 1153 (2003).
- <sup>12</sup> *Wilson v. School Dist. of Philadelphia*, 328 Pa. 225, 195 A. 90, 113 A.L.R. 1401 (1937).
- <sup>13</sup> *Crow v. McAlpine*, 277 S.C. 240, 285 S.E.2d 355, 1 Ed. Law Rep. 1004 (1981).  
As to the legislature's ability to delegate ministerial tasks involving the exercise of the taxing power, see § 95.

- Marshall v. Northern Virginia Transp. Authority, 275 Va. 419, 657 S.E.2d 71 (2008).
- Larson v. Seattle Popular Monorail Authority, 156 Wash. 2d 752, 131 P.3d 892 (2006), as amended, (May 24, 2006) (a municipal corporation).
- Chicagoland Chamber of Commerce v. Pappas, 378 Ill. App. 3d 334, 317 Ill. Dec. 113, 880 N.E.2d 1105 (1st Dist. 2007) (granting power to impose a cap on homestead exemptions to counties).
- Marshall v. Northern Virginia Transp. Authority, 275 Va. 419, 657 S.E.2d 71 (2008).
- First Main Street Corp. v. Board of Assessors of Acton, 49 Mass. App. Ct. 25, 725 N.E.2d 1076 (2000).
- Vonage America, Inc. v. City of Seattle, 152 Wash. App. 12, 216 P.3d 1029 (Div. 1 2009).
- Barclay v. Waters, 357 Ark. 386, 182 S.W.3d 91 (2004).
- First Main Street Corp. v. Board of Assessors of Acton, 49 Mass. App. Ct. 25, 725 N.E.2d 1076 (2000).
- Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355, 1 Ed. Law Rep. 1004 (1981).
- Pitchess v. Superior Court, 2 Cal. App. 3d 653, 83 Cal. Rptr. 41 (2d Dist. 1969); Jackson v. Board of Election Com'rs of City of Chicago, 407 Ill. App. 3d 837, 348 Ill. Dec. 486, 944 N.E.2d 439 (1st Dist. 2011), appeal allowed, 351 Ill. Dec. 3, 949 N.E.2d 1098 (Ill. 2011).
- Southern Valley Grain Dealers Ass'n v. Board of County Com'rs of Richland County, 257 N.W.2d 425 (N.D. 1977).
- State v. Alex, 646 P.2d 203 (Alaska 1982).
- Greater Poughkeepsie Library Dist. v. Town of Poughkeepsie, 81 N.Y.2d 574, 601 N.Y.S.2d 94, 618 N.E.2d 127 (1993).
- Newport Court Club Associates v. Town Council of the Town of Middletown, 800 A.2d 405 (R.I. 2002).
- Greater Poughkeepsie Library Dist. v. Town of Poughkeepsie, 81 N.Y.2d 574, 601 N.Y.S.2d 94, 618 N.E.2d 127 (1993).
- Larson v. Seattle Popular Monorail Authority, 156 Wash. 2d 752, 131 P.3d 892 (2006), as amended, (May 24, 2006) (a municipal corporation).
- Jackson v. Board of Election Com'rs of City of Chicago, 407 Ill. App. 3d 837, 348 Ill. Dec. 486, 944 N.E.2d 439 (1st Dist. 2011), appeal allowed, 351 Ill. Dec. 3, 949 N.E.2d 1098 (Ill. 2011).
- Bolen v. Board of Firemen, Policemen and Fire Alarm Operators' Trustees of San Antonio, Tex., 308 S.W.2d 904 (Tex. Civ. App. San Antonio 1957), writ refused.
- State ex rel. State Highway Commission v. Hudspeth, 297 S.W.2d 510 (Mo. 1957).
- Mount Vernon Housing Authority v. American Motorists Ins. Co., 21 A.D.2d 788, 250 N.Y.S.2d 479 (2d Dep't 1964).
- Greater Poughkeepsie Library Dist. v. Town of Poughkeepsie, 81 N.Y.2d 574, 601 N.Y.S.2d 94, 618 N.E.2d 127 (1993).
- Richmond County Hospital Authority v. McClain, 112 Ga. App. 209, 144 S.E.2d 565 (1965).
- Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355, 1 Ed. Law Rep. 1004 (1981).
- State ex rel. Jardon v. Industrial Development Authority of Jasper County, 570 S.W.2d 666 (Mo. 1978).



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## 71 Am. Jur. 2d State and Local Taxation § 98

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 4. Delegation of Powers

## § 98. Administrative agencies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2429

West's Key Number Digest, [Taxation](#) 🔑 2016, 2076

Particular tax statutes have frequently been held unconstitutional upon the ground that they attempted to delegate some fundamental element of the taxing power to an administrative agency.<sup>1</sup> However, a legislature may delegate to administrative officers and agencies the power to make reasonable rules and regulations in order to apply and enforce legislation.<sup>2</sup> Thus, the delegation of power to an administrative agency will be deemed unlawful unless it is accompanied by sufficient or reasonable standards or safeguards.<sup>3</sup> A proper statutory delegation of the legislative power to tax requires the statute to contain an intelligible standard capable of administrative application and guidelines on how the statute is to be applied.<sup>4</sup>

The vesting in administrative tax officials duties of a judicial or “quasi-judicial” nature, such as the finding of facts as a basis for administrative action, is not necessarily invalid as a violation of the doctrine of separation of powers.<sup>5</sup> Moreover, the delegation of legislative authority to an administrative agency, ratifying its use of discretion in calculating taxes limited to the previous method of calculation, does not violate the non-delegation doctrine.<sup>6</sup> However, another court has ruled that a board of equalization cannot be delegated taxation authority to set equalization ratios after the first requirement full value assessment has been completed.<sup>7</sup>

The legislature may choose to delegate the discreet power of setting the amount of government charges so approved to an executive branch agency or other governmental body without violating the separation of powers explicitly provided by the state constitution because the setting of fees and taxes is a delegable power.<sup>8</sup>

If the proper guidelines are established, the power to tax may lawfully be delegated to, inter alia, a state department of insurance,<sup>9</sup> a state commissioner of revenue,<sup>10</sup> or a state treasurer.<sup>11</sup>

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Footnotes

- <sup>1</sup> Greater Poughkeepsie Library Dist. v. Town of Poughkeepsie, 81 N.Y.2d 574, 601 N.Y.S.2d 94, 618 N.E.2d 127 (1993); Rocky Mountain Oil and Gas Ass'n v. State Bd. of Equalization, 749 P.2d 221 (Wyo. 1987).
- <sup>2</sup> Comptroller of Treasury v. M. E. Rockhill, Inc., 205 Md. 226, 107 A.2d 93 (1954).
- <sup>3</sup> Carpenter Technology Corp. v. Commissioner of Taxation and Finance, 295 A.D.2d 830, 745 N.Y.S.2d 86 (3d Dep't 2002); First Republic Corp. of America v. Norberg, 116 R.I. 414, 358 A.2d 38 (1976).
- <sup>4</sup> State Comp. Ins. Fund. v. State Bd. of Equalization, 14 Cal. App. 4th 1295, 18 Cal. Rptr. 2d 526 (1st Dist. 1993); Greater Poughkeepsie Library Dist. v. Town of Poughkeepsie, 81 N.Y.2d 574, 601 N.Y.S.2d 94, 618 N.E.2d 127 (1993).
- <sup>5</sup> Berdahl v. Gillis, 81 S.D. 436, 136 N.W.2d 633 (1965).
- <sup>6</sup> City of Belmont v. Mississippi State Tax Com'n, 860 So. 2d 289 (Miss. 2003).
- <sup>7</sup> Rocky Mountain Oil and Gas Ass'n v. State Bd. of Equalization, 749 P.2d 221 (Wyo. 1987) (noting that the establishment of assessment ratios constitutes the power of taxation and not a ministerial duty).
- <sup>8</sup> Benson v. State, 389 Md. 615, 887 A.2d 525 (2005).
- <sup>9</sup> Coy v. Florida Birth-Related Neurological Injury Compensation Plan, 595 So. 2d 943 (Fla. 1992).
- <sup>10</sup> Liberty Mut. Ins. Co. v. Commissioner of Revenue, 405 Mass. 352, 541 N.E.2d 566 (1989).
- <sup>11</sup> Atlantic City Casino Ass'n v. City of Atlantic City, 217 N.J. Super. 277, 525 A.2d 1109 (App. Div. 1985).

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## 71 Am. Jur. 2d State and Local Taxation § 99

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

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## § 99. Judicial officers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2403

West's Key Number Digest, [Taxation](#) 🔑 2016, 2076

The power to tax is vested in the legislature and cannot be delegated to the courts or judiciary.<sup>1</sup> Thus, a statute giving a court legislative discretion in determining the method to assess and levy tax against real property in an improvement district was an unconstitutional delegation of legislative taxing power in violation of separation of powers provisions of the state constitution in the absence of language directing the court to use a particular method for computing the tax levy.<sup>2</sup>

Constitutionally proper delegations of power involving taxes have been made where the actual power to tax has not been involved. For instance, statutes imposing criminal statutory assessments which were reasonably related to the costs of administering the criminal justice system did not make the courts “tax gatherers.”<sup>3</sup> In addition, an administrative tax court whose decisions, upon filing, automatically became court orders did not constitute an unlawful delegation of taxing power because taxpayers had the right to elect a judicial, rather than an administrative, determination and because there was an ultimate check on administrative power in the form of a court review as a matter of right.<sup>4</sup>

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### Footnotes

<sup>1</sup> [Abbott Laboratories v. Franchise Tax Bd.](#), 175 Cal. App. 4th 1346, 96 Cal. Rptr. 3d 864 (2d Dist. 2009), as modified, (Aug. 6, 2009); [Idaho Schools For Equal Educational Opportunity v. State](#), 140 Idaho 586, 97 P.3d 453, 191 Ed. Law Rep. 876 (2004); [State ex rel. Ledbetter v. Duncan](#), 702 S.W.2d 163 (Tenn. 1985).

<sup>2</sup> [Robert D. Holloway, Inc. v. Pine Ridge Addition Residential Property Owners](#), 332 Ark. 450, 966 S.W.2d 241 (1998).

<sup>3</sup> State v. Claborn, 1994 OK CR 8, 870 P.2d 169 (Okla. Crim. App. 1994).

<sup>4</sup> Wulff v. Tax Court of Appeals, 288 N.W.2d 221 (Minn. 1979).

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## 71 Am. Jur. 2d State and Local Taxation § 100

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VII. Constitutional Requirements

##### C. Effect of State Constitutions

##### 4. Delegation of Powers

## § 100. Individuals, private corporations, or associations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 2442

West's Key Number Digest, [Municipal Corporations](#) 🔑 957(2)

West's Key Number Digest, [Taxation](#) 🔑 2016, 2076

A state's constitutional prohibition against delegation is violated when the taxing power is delegated to a body composed of persons not assented to by the people or subject to the control of the people or a body chosen by the people.<sup>1</sup>

The legislature is not usually empowered to delegate the right to levy taxes to individuals, corporations, or associations. For instance, a statute, which imposed a tax of 20% on all admissions to view movies either rated "X" or not rated by a private, voluntary organization of major film producers in the United States, was held unconstitutional as an illegal delegation of legislative power since the producers' organization determined which pictures should be rated "X" and therefore, of necessity, determined which films would be taxed at 20%.<sup>2</sup> In addition, it has been held that when a public employee arbitration award would infringe on the legislative power of the General Assembly or on the law-making body of a political subdivision, as, for example, if a levying of taxes was required by the award, then that award was invalid as an attempted delegation of legislative power to a nonlegislative body.<sup>3</sup> However, the delegation of administrative duties, such as the collection of taxes by private trash collectors, has been approved.<sup>4</sup> In addition, a statute providing for the establishment of a suburban improvement district did not unconstitutionally delegate the responsibility of designating lands to be included in the district, the authority to select improvements, and the power to levy taxes and issue evidences of indebtedness to private individuals since the proposed purposes for the district had to be submitted and approved by the county or circuit court, and the improvements for which the district could be organized and the powers which it could exercise were set out by the statute.<sup>5</sup> A statute authorizing the sale of municipal tax liens and giving purchasers thereof the right to foreclose upon such liens if the owner of the property failed to pay the sums due was not invalid as delegating a part of the taxing power to an individual since the statute assumed that before a sale of the tax lien was made, a valid tax had been assessed, and all that was conferred on the purchaser was the right to collect the tax in the manner laid down by the legislature.<sup>6</sup>

A delegation to the people of the power to enact or repeal a tax by popular vote is a delegation of the power to make law, rather than to execute the law, and is void in the absence of constitutional authorization.<sup>7</sup>

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#### Footnotes

- <sup>1</sup> English v. Com., 845 A.2d 999 (Pa. Commw. Ct. 2004); Weaver v. Recreation Dist., 328 S.C. 83, 492 S.E.2d 79 (1997); Hagley Homeowners Ass'n, Inc. v. Hagley Water, Sewer, and Fire Authority, 326 S.C. 67, 485 S.E.2d 92 (1997).
- <sup>2</sup> Eastern Federal Corp. v. Wasson, 281 S.C. 450, 316 S.E.2d 373 (1984).
- <sup>3</sup> Franklin County Prison Bd. v. Pennsylvania Labor Relations Bd., 491 Pa. 50, 417 A.2d 1138 (1980).
- <sup>4</sup> Whatcom County v. Taxpayers of Whatcom County Solid Waste Disposal Dist., 66 Wash. App. 284, 831 P.2d 1140 (Div. 1 1992).
- <sup>5</sup> Cherokee Village Homeowners Protective Ass'n v. Cherokee Village Road and St. Imp. Dist. No. 1, 248 Ark. 1055, 455 S.W.2d 93 (1970).
- <sup>6</sup> Gautier v. Ditmar, 204 N.Y. 20, 97 N.E. 464 (1912).
- <sup>7</sup> Akin v. Director of Revenue, 934 S.W.2d 295, 114 Ed. Law Rep. 964 (Mo. 1996).

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## 71 Am. Jur. 2d State and Local Taxation Two VIII A Refs.

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### A. In General

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3006, 3043, 3057, 3560, 3574

West's Key Number Digest, [Municipal Corporations](#) 🔑 971, 972, 976, 978(1), 984 to 986

West's Key Number Digest, [Taxation](#) 🔑 2120 to 2122, 2126, 2128, 2132, 2289, 2290

### A.L.R. Library

A.L.R. Index, Constitutional Law

A.L.R. Index, Equal and Uniform Taxation

A.L.R. Index, Taxes

West's A.L.R. Digest, [Constitutional Law](#) 🔑 3006, 3043, 3057, 3560, 3574

West's A.L.R. Digest, [Municipal Corporations](#) 🔑 971, 972, 976, 978(1), 984 to 986

West's A.L.R. Digest, [Taxation](#) 🔑 2120 to 2122, 2126, 2128, 2132, 2289, 2290

### Trial Strategy

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property, 28 Am. Jur. Proof of Facts 3d 439](#)



**Forms**

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 12, 18, 42](#)

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## 71 Am. Jur. 2d State and Local Taxation § 101

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### A. In General

## § 101. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3560

West's Key Number Digest, [Taxation](#) 🔑 2120, 2121

### Trial Strategy

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property, 28 Am. Jur. Proof of Facts 3d 439](#)

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 42](#) (Complaint, petition, or declaration—Allegation—Unconstitutionality of statute authorizing disproportionate assessment of real property)

Which property shall be taxed and how it shall be taxed are legislative questions so long as there is uniformity and equality of rate as to those of the same class.<sup>1</sup> Indeed, the basic principle of taxation is equality.<sup>2</sup> Equality in the burden of taxation in turn requires equality of taxation in proportion to the value of the property taxed.<sup>3</sup> As also stated, taxes must be levied proportionately upon all taxpayers.<sup>4</sup> Thus, the constitutional requirement of equal and uniform taxation requires that similar properties within the same district be assessed on a similar basis.<sup>5</sup> The term “taxing district” in the uniformity clause in a state constitution may mean a municipality.<sup>6</sup>

Although the Equal Protection Clause of the 14th Amendment to the United States Constitution, as well as uniformity clauses found in state constitutions, mandate substantial uniformity and approximate equality in tax laws, there is no constitutional requirement that tax statutes be framed to insure absolute equality of economic impact on all persons or to insure equal tax benefits and burdens.<sup>7</sup> Reasonable schemes of taxation require flexibility, and some difference of treatment between citizens is virtually inevitable.<sup>8</sup> Thus, perfect or absolute uniformity or absolute equality is not required to satisfy the constitutional requirement of uniformity.<sup>9</sup>

**Observation:**

The end result—a uniform and equal rate of assessment—is required by the property tax assessment scheme, but there is no requirement of uniform procedures to arrive at that rate.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Constitutional tax uniformity does not apply to the exact dollar number on a tax bill. [Va. Const. art. 10, § 1](#). [International Paper Company v. County of Isle of Wight](#), 847 S.E.2d 507 (Va. 2020).

### [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Majestic Star Casino, LLC v. Blumenburg](#), 817 N.E.2d 322 (Ind. Tax Ct. 2004).
- <sup>2</sup> [Metropolitan Jacobson Development Venture v. Board of Review of City of Des Moines](#), 524 N.W.2d 189 (Iowa 1994); [Township of West Milford v. Van Decker](#), 120 N.J. 354, 576 A.2d 881 (1990).
- <sup>3</sup> [Golf Trust of America, L.P. v. Soat](#), 355 Ill. App. 3d 333, 290 Ill. Dec. 977, 822 N.E.2d 562 (2d Dist. 2005); [State ex rel. Stephan v. Martin](#), 227 Kan. 456, 608 P.2d 880 (1980).
- <sup>4</sup> [D'Antoni v. Commissioner, New Hampshire Dept. of Health and Human Services](#), 153 N.H. 655, 917 A.2d 177 (2006).
- <sup>5</sup> [Constructors, Inc. v. Cass County Bd. of Equalization](#), 258 Neb. 866, 606 N.W.2d 786 (2000); [Stehly v. Davison County](#), 2011 SD 49, 802 N.W.2d 897 (S.D. 2011); [RT Communications, Inc. v. State Bd. of Equalization for State of Wyo.](#), 11 P.3d 915 (Wyo. 2000).
- <sup>6</sup> [Keane v. Township of Monroe](#), 25 N.J. Tax 479, 2010 WL 4351952 (2010).
- <sup>7</sup> [Allegheny Pittsburgh Coal Co. v. County Com'n of Webster County, W. Va.](#), 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989).
- <sup>8</sup> [USGen New England, Inc. v. Town of Rockingham](#), 176 Vt. 104, 2003 VT 102, 838 A.2d 927 (2003).

<sup>9</sup> Washington County Bd. of Equalization v. Petron Development Co., 109 P.3d 146 (Colo. 2005); The Senator, Inc. v. Ada County, Bd. of Equalization, 138 Idaho 566, 67 P.3d 45 (2003); Cook County Bd. of Review v. Property Tax Appeal Bd., 403 Ill. App. 3d 139, 344 Ill. Dec. 521, 937 N.E.2d 227 (1st Dist. 2010); Walker v. Zuehlke, 642 N.W.2d 745 (Minn. 2002); Beattie v. Allegheny County, 589 Pa. 113, 907 A.2d 519 (2006).

<sup>10</sup> Westfield Golf Practice Center, LLC v. Washington Tp. Assessor, 859 N.E.2d 396 (Ind. Tax Ct. 2007).

## 71 Am. Jur. 2d State and Local Taxation § 102

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### A. In General

## § 102. Uniformity clauses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3006, 3043, 3057, 3560

West's Key Number Digest, [Taxation](#) 🔑 2120, 2121

### Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 12](#) (Complaint, petition, or declaration—To declare invalid a method of assessment based on disproportionate valuation—To enjoin assessment and collection of taxes based on such disproportionate valuation)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 18](#) (Complaint, petition, or declaration—Allegation—Excessive valuation of property)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 42](#) (Complaint, petition, or declaration—Allegation—Unconstitutionality of statute authorizing disproportionate assessment of real property)

The object of the uniformity clause of a state constitution is accomplished if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.<sup>1</sup> The purpose of the a state's constitutional uniformity clause is to ensure that each taxpayer's property bear a just proportion of the property tax burden.<sup>2</sup> Under state constitutional uniformity of taxation clauses, under which all property taxes must be assessed according to the same standard of value,<sup>3</sup> the controlling principle is one of equal,<sup>4</sup> similar,<sup>5</sup> or comparable<sup>6</sup> treatment of similarly situated taxpayers. Uniformity clauses require equality in distributing the burdens of taxation.<sup>7</sup> However, a uniformity provision does not support the argument that the state's constitution contains an unstated, implied ban on the ability of the legislature to classify commercial and industrial real estate differently from other real estate for taxation purposes.<sup>8</sup>

The limitations placed on a State's power of taxation by the uniformity clause of a state constitution are the same as those

embodied in the Equal Protection Clause of the United States Constitution.<sup>9</sup> Allegations of violations of the Federal Equal Protection Clause and of a state's constitutional uniformity clause are to be analyzed in the same manner in matters of taxation.<sup>10</sup> Both the state and federal constitutional uniformity clauses require a rational basis for distinguishing among similar classes.<sup>11</sup> If a tax is constitutional under the uniformity clause of a state constitution, it inherently fulfills the requirements of the Equal Protection Clause of the Federal Constitution,<sup>12</sup> and in general, what violates one will contravene the other.<sup>13</sup> However, in some jurisdictions, it has been said that that a state's uniformity clause provides greater protection for taxpayers than does the Equal Protection Clause of the 14th Amendment.<sup>14</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

When the Legislature makes a classification in levying a tax, it will survive scrutiny under the state Uniformity Clause and the federal Equal Protection Clause so long as there is some reasonable justification for treating the relevant group of taxpayers differently than others. *U.S.C.A. Const.Amend. 14*; Const. Art. 8, § 1. *Hospital & Healthsystem Ass'n of Pa. v. Com.*, 77 A.3d 587 (Pa. 2013).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> *Sarpy County Farm Bureau v. Learning Community of Douglas and Sarpy Counties*, 283 Neb. 212, 808 N.W.2d 598 (2012).
- <sup>2</sup> *Citizens Telecommunications Co. of White Mountains v. Arizona Dept. of Revenue*, 206 Ariz. 33, 75 P.3d 123 (Ct. App. Div. 1 2003).
- <sup>3</sup> *Sarpy County Farm Bureau v. Learning Community of Douglas and Sarpy Counties*, 283 Neb. 212, 808 N.W.2d 598 (2012).
- <sup>4</sup> *Allegheny Pittsburgh Coal Co. v. County Com'n of Webster County, W. Va.*, 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989).
- <sup>5</sup> *Clifton v. Allegheny County*, 600 Pa. 662, 969 A.2d 1197 (2009).
- <sup>6</sup> *Regent Care Center, Inc. v. Hackensack City*, 362 N.J. Super. 403, 828 A.2d 332 (App. Div. 2003).
- <sup>7</sup> *The Senator, Inc. v. Ada County, Bd. of Equalization*, 138 Idaho 566, 67 P.3d 45 (2003); *Golf Trust of America, L.P. v. Soat*, 355 Ill. App. 3d 333, 290 Ill. Dec. 977, 822 N.E.2d 562 (2d Dist. 2005); *Metropolitan Jacobson Development Venture v. Board of Review of City of Des Moines*, 524 N.W.2d 189 (Iowa 1994).
- <sup>8</sup> *FFW Enterprises v. Fairfax County*, 280 Va. 583, 701 S.E.2d 795 (2010).
- <sup>9</sup> *Community Memorial Home at Osakis, Minnesota, Inc. v. County of Douglas*, 573 N.W.2d 83 (Minn. 1997); *Schievella v. Department of Taxes*, 171 Vt. 591, 765 A.2d 479 (2000).
- <sup>10</sup> *DelGaizo v. Com.*, 23 A.3d 610 (Pa. Commw. Ct. 2011).
- <sup>11</sup> *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412 (Minn. 2005); *Opinion of the Justices*, 142 N.H. 892, 712 A.2d 1080, 127 Ed. Law Rep. 887 (1998).

- <sup>12</sup> Allegro Services, Ltd. v. Metropolitan Pier and Exposition Authority, 172 Ill. 2d 243, 216 Ill. Dec. 689, 665 N.E.2d 1246 (1996); In re Alternative Minimum Tax Refund Cases, 546 N.W.2d 285 (Minn. 1996).
- <sup>13</sup> Wilson Partners, L.P. v. Com., Bd. of Finance and Revenue, 558 Pa. 462, 737 A.2d 1215 (1999).
- <sup>14</sup> Aileen H. Char Life Interest v. Maricopa County, 208 Ariz. 286, 93 P.3d 486 (2004); Empress Casino Joliet Corp. v. Giannoulas, 231 Ill. 2d 62, 324 Ill. Dec. 491, 896 N.E.2d 277 (2008).

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## 71 Am. Jur. 2d State and Local Taxation § 103

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### A. In General

## § 103. Assessments and levies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3574

West's Key Number Digest, [Municipal Corporations](#) 🔑 971, 972

West's Key Number Digest, [Taxation](#) 🔑 2121, 2126, 2128

The sections of state constitutions requiring taxation to be uniform on all property of the same class require a uniform classification with respect to the levy<sup>1</sup> and assessment<sup>2</sup> of taxes. Thus, the ratio of assessed value to market value adopted by the taxing authority must be applied equally and uniformly to all real estate within the taxing authority's jurisdiction.<sup>3</sup> An assessment must represent the owner's equal portion of his or her burden of taxation.<sup>4</sup> Regardless of the methodology adopted by the assessor to assess property, the result must reflect the realistic value of the property so that the tax burden of each property is equitable.<sup>5</sup> A state constitution provision requiring that taxes be levied by general laws does not require every tax law to be equally applied to all property in the state.<sup>6</sup>

The use of two methods to assess, for real property tax purposes, real property within the same class does not, by itself, violate the Equal Protection Clause of the Federal Constitution's 14th Amendment because the Equal Protection Clause applies only to taxation that in fact bears unequally on persons or property of the same class.<sup>7</sup> The use, as a transitional substitute for individual reappraisals of a particular class of real property, of general adjustments in the assessments on which real property taxes are based does not violate the Equal Protection Clause so long as the adjustments are accurate enough over a short time period to approximately equalize the proportionate assessments of the property within the class.<sup>8</sup> Moreover, a state uniformity clause is not violated when changes in a tax deduction statute create inequalities because comparable property is treated differently during the same year due to a transitional phase-out of prior deductions.<sup>9</sup> While the tax assessor must use the same standard or system in determining and fixing the taxable value of all property of the same class, it is not impermissible under the uniformity of taxation provision of the constitution to apply different methods of arriving at the fair market value of tangible property.<sup>10</sup> However, where a city uses a different methodology to reassess property, a methodology that the city had not used before or since, and this methodology results in a significantly higher assessment than the surrounding properties, the assessment violates the uniformity clause.<sup>11</sup> Moreover, a uniformity clause of the state constitution may require that the method or mode of taxing real property must be applied uniformly to all classes of property within the



tax district.<sup>12</sup>

A valid property tax assessment must include two distinct factual findings: (1) that the property was assessed at its fair market value and (2) that the assessed value was equitable, that is, the property was assessed at a relatively uniform rate with comparable property in the district.<sup>13</sup> Uniformity and equality of taxation is preferred over the standard of full and true value when both cannot be secured.<sup>14</sup> A taxpayer challenging an assessment must produce sufficient evidence to show that the property's assessed valuation exceeds the true and full value, lacks uniformity in the same class, or is discriminatory.<sup>15</sup>

Inequalities in the assessment of property taxes are not necessarily unconstitutional.<sup>16</sup> Under a uniformity clause, differential tax treatment can be based on the use or nature of the property.<sup>17</sup>

A county equalization table does not violate a state constitutional uniformity clause by using an averaging formula applied to a declining real estate market where the formula equally applies to all municipalities in the county.<sup>18</sup>

**Caution:**

While general improvements to property are funded by general taxes and must comply with the rule of uniformity, local public improvements may be financed by special assessments levied against individual properties and are not limited by the rule of uniformity.<sup>19</sup>

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**Footnotes**

- <sup>1</sup> Hall County v. State Bd. of Equalization and Assessment, 250 Neb. 323, 549 N.W.2d 164 (1996).
- <sup>2</sup> Delogu v. State, 1998 ME 246, 720 A.2d 1153 (Me. 1998); Constructors, Inc. v. Cass County Bd. of Equalization, 258 Neb. 866, 606 N.W.2d 786 (2000).
- <sup>3</sup> In re Sullivan, 2012 WL 75298 (Pa. Commw. Ct. 2012).
- <sup>4</sup> Cook County Bd. of Review v. Property Tax Appeal Bd., 403 Ill. App. 3d 139, 344 Ill. Dec. 521, 937 N.E.2d 227 (1st Dist. 2010); City of Biddeford v. Adams, 1999 ME 49, 727 A.2d 346 (Me. 1999); Laramie County Bd. of Equalization v. Wyoming State Bd. of Equalization, 915 P.2d 1184 (Wyo. 1996).
- <sup>5</sup> Hudson Property Owners' Coalition, Inc. v. Slocum, 92 A.D.3d 1198, 939 N.Y.S.2d 177 (3d Dep't 2012).
- <sup>6</sup> Powder River County v. State, 2002 MT 259, 312 Mont. 198, 60 P.3d 357 (2002).
- <sup>7</sup> Allegheny Pittsburgh Coal Co. v. County Com'n of Webster County, W. Va., 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989).
- <sup>8</sup> Allegheny Pittsburgh Coal Co. v. County Com'n of Webster County, W. Va., 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989).
- <sup>9</sup> State Bd. of Tax Commissioners v. Inland Container Corp., 785 N.E.2d 227 (Ind. 2003).
- <sup>10</sup> Lamplight Court Apartments, LLC v. DeKalb County Bd. of Tax Assessors, 259 Ga. App. 642, 577 S.E.2d 814 (2003).
- <sup>11</sup> U.S. Oil Co., Inc. v. City of Milwaukee, 331 Wis. 2d 407, 2011 WI App 4, 794 N.W.2d 904 (Ct. App. 2010).

- <sup>12</sup> Great Lakes Quick Lube, LP v. City of Milwaukee, 331 Wis. 2d 137, 2011 WI App 7, 794 N.W.2d 510 (Ct. App. 2010).
- <sup>13</sup> Chase v. Town of Machiasport, 1998 ME 260, 721 A.2d 636 (Me. 1998); Lee Gardens Arlington Ltd. Partnership v. Arlington County Bd., 250 Va. 534, 463 S.E.2d 646 (1995).
- <sup>14</sup> West Two Rivers Ranch v. Pennington County, 1996 SD 70, 549 N.W.2d 683 (S.D. 1996).
- <sup>15</sup> Butte County v. Vallery, 1999 SD 142, 602 N.W.2d 284 (S.D. 1999).
- <sup>16</sup> District of Columbia v. Keyes, 362 A.2d 729 (D.C. 1976).
- <sup>17</sup> Constructors, Inc. v. Cass County Bd. of Equalization, 258 Neb. 866, 606 N.W.2d 786 (2000).
- <sup>18</sup> Township of Jefferson v. Morris County Bd. of Taxation, 26 N.J. Tax 129, 2011 WL 4909946 (2011).
- <sup>19</sup> Genrich v. City of Rice Lake, 268 Wis. 2d 233, 2003 WI App 255, 673 N.W.2d 361 (Ct. App. 2003).

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## 71 Am. Jur. 2d State and Local Taxation § 104

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### A. In General

## § 104. Statutory exemptions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2289, 2290

It is inherent in the exercise of the power to tax that a State be free to grant exemptions,<sup>1</sup> and the inequalities which result from the singling out of one particular class for taxation or exemption infringe no constitutional limitation.<sup>2</sup> Indeed, while a state constitution requires property taxes to be proportional and reasonable, neither this constitutional provision nor the more general provisions concerning the duty of individuals to contribute to the expenses of protection of life, liberty, and property preclude reasonable exemptions.<sup>3</sup> Thus, tax exemptions that result in a disproportionate tax burden on the remaining property in the taxing district are constitutional if they are supported by just reasons and thereby reasonably promote some proper object of public welfare or interest.<sup>4</sup> However, it is the policy of tax laws to require all property to bear its proportion of public burdens except that which is specially exempted.<sup>5</sup> The constitutional requirement of tax uniformity is pro tanto violated by statutes exempting property from taxation; thus, statutory language must be construed most strongly against the exemption.<sup>6</sup> Indeed, exemptions from taxation must receive a strict construction<sup>7</sup> because such laws are in derogation of equal rights<sup>8</sup> and because they undermine equality and uniformity by placing a greater burden on some taxpaying businesses and individuals rather than placing the burden on all taxpayers equally.<sup>9</sup> In determining whether exemptions are valid under a uniformity clause, the court must consider whether the exemptions improperly shift the property tax burden to the remaining tax base and whether there is a substantial difference of situation or circumstance justifying differing legislation for the objects classified.<sup>10</sup>

For purposes of a rational basis review under the Equal Protection Clause of the Federal Constitution's 14th Amendment, the latitude of discretion is notably wide in the granting of partial or total exemptions from a general scheme of taxation upon grounds of policy.<sup>11</sup> However, it is fundamentally unfair for a legislature statutorily to manipulate assessment standards to favor certain taxpayers over others, and a legislature is without authority to grant an exemption from taxes where the exemption has no constitutional basis.<sup>12</sup>

It is unlawful for an assessor to exempt one kind of property while classifying the same kind of property in the same district as nonexempt.<sup>13</sup> In order to support an exemption, the distinction between taxed and wholly exempt property must bear a

reasonable relation to a legitimate purpose of government.<sup>14</sup>

In general, homestead exemption statutes do not violate various constitutional provisions.<sup>15</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Measurements based upon the size of the chassis of each trailer at taxpayer's campground resort facility could not be used to establish that the trailers were 400 square feet or less in size, as required to qualify for exemption from property taxation for recreational vehicles that are 400 square feet or less, self propelled or towable by an automobile or light duty truck and used as temporary living quarters for recreational, camping, travel or seasonal use; trailers were vehicles, and their dimensions were thus required to be measured inclusive of load and bumpers. [McKinney's RPTL § 102\(12\)\(g\)\(3\)](#); [McKinney's Vehicle and Traffic Law §§ 156, 159](#); [24 C.F.R. § 3282.8\(g\)\(2\)](#). [Allegany Mountain Resort, LLC v. Town of East Otto](#), 132 A.D.3d 1346, 2015 WL 5894848 (4th Dep't 2015).

Homestead exemption statute, prohibiting a person from claiming Florida homestead exemption if claiming residency exemption in another state and allowing back tax and penalties for an improper homestead exemption claim, applied to Florida property of Florida residents who had been receiving homestead exemption for property they owned in Ohio, even though they were residents of Florida and were unaware they were mistakenly receiving permanent residency tax exemption in Ohio, and Ohio tax benefit was negligible. [Fla. Stat. Ann. § 196.161\(1\)\(b\)](#). [Fitts v. Furst](#), 283 So. 3d 833 (Fla. 2d DCA 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Morning Star Co. v. Board of Equalization](#), 201 Cal. App. 4th 737, 135 Cal. Rptr. 3d 457 (3d Dist. 2011), review denied, (Mar. 21, 2012).
- <sup>2</sup> [Horizon Blue Cross Blue Shield of New Jersey v. State](#), 25 N.J. Tax 290, 2009 WL 5707108 (2009), *aff'd*, 2012 WL 715965 (N.J. Super. Ct. App. Div. 2012).
- <sup>3</sup> [WB & T Mortg. Co., Inc. v. Board of Assessors of Boston](#), 451 Mass. 716, 889 N.E.2d 404 (2008).
- <sup>4</sup> [In re Town of Bethlehem](#), 154 N.H. 314, 911 A.2d 1 (2006).
- <sup>5</sup> [United Illuminating Co. v. City of New Haven](#), 240 Conn. 422, 692 A.2d 742 (1997).
- <sup>6</sup> [Sun Oil Co. v. Lindley](#), 56 Ohio St. 2d 313, 10 Ohio Op. 3d 439, 383 N.E.2d 908 (1978).
- <sup>7</sup> [First Baptist Church of Milford v. Wilkins](#), 110 Ohio St. 3d 496, 2006-Ohio-4966, 854 N.E.2d 494 (2006); [American Housing Foundation v. Harris County Appraisal Dist.](#), 283 S.W.3d 76 (Tex. App. Houston 14th Dist. 2009).
- <sup>8</sup> [First Baptist Church of Milford v. Wilkins](#), 110 Ohio St. 3d 496, 2006-Ohio-4966, 854 N.E.2d 494 (2006).
- <sup>9</sup> [American Housing Foundation v. Harris County Appraisal Dist.](#), 283 S.W.3d 76 (Tex. App. Houston 14th Dist. 2009).
- <sup>10</sup> [Jaksha v. State](#), 241 Neb. 106, 486 N.W.2d 858 (1992).

- <sup>11</sup> Nordlinger v. Hahn, 505 U.S. 1, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992).
- <sup>12</sup> Archer v. Marshall, 355 So. 2d 781 (Fla. 1978).
- <sup>13</sup> Christian County Bd. of Review v. Property Tax Appeal Bd., 368 Ill. App. 3d 792, 306 Ill. Dec. 851, 858 N.E.2d 909 (5th Dist. 2006).
- <sup>14</sup> Northwest Airlines, Inc. v. Wisconsin Dept. of Revenue, 2006 WI 88, 293 Wis. 2d 202, 717 N.W.2d 280 (2006).
- <sup>15</sup> Masters v. DeKalb County Bd. of Tax Assessors, 288 Ga. 241, 703 S.E.2d 320 (2010).

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## 71 Am. Jur. 2d State and Local Taxation § 105

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### A. In General

## § 105. Assessments other than taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2122

### A.L.R. Library

[Validity of state or local gross receipts tax on gambling, 21 A.L.R.5th 812](#)

[Validity, construction, and application of state laws imposing tax or license fee on possession, sale, or the like, of illegal narcotics, 12 A.L.R.5th 89](#)

Because there is a distinction between taxes and assessments in the context of the uniformity clause, the requisite initial determination in any analysis under such a clause is that the challenged provision is, indeed, a tax.<sup>1</sup> Among the categories of statutes that do not constitute the imposition of a tax are statutes requiring a city to make payments to counties in support of an optional state property tax assessment scheme,<sup>2</sup> statutes imposing real estate transfer fees,<sup>3</sup> and statutes requiring that various state, county, and municipal employees temporarily pay a percentage of their salaries into their respective pension funds.<sup>4</sup>

A “special assessment” is not a tax which comes within a constitutional provision requiring that property be assessed for taxation by uniform rules.<sup>5</sup> Revenue used solely to defray the costs of administration of duties imposed on a county or regional authority is a “regulatory fee,” rather than a “tax,” and is not required to be equal and uniform throughout the state.<sup>6</sup> Similarly, real estate transfer fees collected by local governments to be remitted to the State do not levy a tax and, thus, are not subject to the constitutional requirement that property tax levies be uniform.<sup>7</sup>

The constitutional requirement of the uniformity of taxes applies only to property taxes<sup>8</sup> and not to excise taxes.<sup>9</sup>

**Caution:**

The mere labeling of an exaction as an “excise” tax is not determinative of its nature as an excise or a property tax for the purpose of applying the constitutional requirement that taxes on realty and personalty be apportioned and assessed equally according to value.<sup>10</sup>

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Footnotes

- <sup>1</sup> AFSCME Councils 6, 14, 65 and 96, AFL-CIO v. Sundquist, 338 N.W.2d 560 (Minn. 1983).
- <sup>2</sup> Jackson County v. Kansas City, 722 S.W.2d 67 (Mo. 1986).
- <sup>3</sup> Town of Hilton Head Island v. Morris, 324 S.C. 30, 484 S.E.2d 104 (1997).
- <sup>4</sup> AFSCME Councils 6, 14, 65 and 96, AFL-CIO v. Sundquist, 338 N.W.2d 560 (Minn. 1983).
- <sup>5</sup> 2nd Roc-Jersey Associates v. Town of Morristown, 158 N.J. 581, 731 A.2d 1 (1999).
- <sup>6</sup> Wetzel County Solid Waste Authority v. West Virginia Div. of Natural Resources, 195 W. Va. 1, 462 S.E.2d 349 (1995).
- <sup>7</sup> Town of Hilton Head Island v. Morris, 324 S.C. 30, 484 S.E.2d 104 (1997).
- <sup>8</sup> Colorado Dept. of Social Services v. Board of County Com’rs of Pueblo County, 697 P.2d 1 (Colo. 1985); Wellington River Hollow, LLC v. King County, 121 Wash. App. 224, 54 P.3d 213, 169 Ed. Law Rep. 420, 16 A.L.R.6th 875 (Div. 1 2002), as amended on denial of reconsideration, (Feb. 9, 2004).
- <sup>9</sup> Ogrinz v. James, 309 Md. 381, 524 A.2d 77 (1987); Wellington River Hollow, LLC v. King County, 121 Wash. App. 224, 54 P.3d 213, 169 Ed. Law Rep. 420, 16 A.L.R.6th 875 (Div. 1 2002), as amended on denial of reconsideration, (Feb. 9, 2004).
- <sup>10</sup> Opinion of the Justices, 335 A.2d 904 (Me. 1975).

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## 71 Am. Jur. 2d State and Local Taxation § 106

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### A. In General

## § 106. Payment, enforcement, and disposition of taxes collected

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Municipal Corporations](#) 🔑 976, 978(1), 984 to 986

West's Key Number Digest, [Taxation](#) 🔑 2132

It is the levy or assessment of the tax which must be uniform and not its means of enforcement or manner of collection.<sup>1</sup> Thus, employing different methods to collect a tax does not render a tax unconstitutional under a uniformity of taxation clause in a state constitution.<sup>2</sup> Furthermore, the constitutional requirements of equality and uniformity of taxation relate to the assessment and levy of taxes, and neither the requirements of uniformity nor of equal protection of the law limit a legislature's authority to allocate or distribute the tax revenues.<sup>3</sup> Thus, a municipality does not violate the constitutional "uniformity" requirement governing the assessment and collection of taxes in political subdivisions by taxing all residents at the same rate while providing certain services, such as road and bridge maintenance and law enforcement, only to unincorporated areas.<sup>4</sup> Similarly, a taxpayer has no valid equal protection or due process claim merely because he or she fails to receive the benefits of general levy tax money to the same extent as other citizens similarly situated.<sup>5</sup> Even though units of government within a specified area may contribute more of their tax base to a pool than is redistributed to them in a given year, they may nevertheless receive sufficient benefits to satisfy the constitutional requirement of uniformity since only a reasonable relationship need exist between the burdens and benefits of a tax.<sup>6</sup> The method of distribution of revenues is not a factor for a court to scrutinize when considering the constitutionality of a tax.<sup>7</sup>

### CUMULATIVE SUPPLEMENT

#### Cases:

Erroneous homestead exemption statute, which subjected property owner to property taxes, interest, and penalties for having claimed three or more improper homestead exemptions within preceding six assessment years did not implicate revenue



article of Illinois Constitution requiring uniformity in taxation of real property within each individual tax district; article did not address penalties for delinquent taxes or mechanisms to collect them, and statute did not impose tax but merely established method of collecting delinquent taxes. [Ill. Const. art. 9, § 4](#); [35 Ill. Comp. Stat. Ann. § 200/9-275\(f\)](#). [Cuevas v. Berrios, 2017 IL App \(1st\) 151318, 413 Ill. Dec. 465, 78 N.E.3d 457 \(App. Ct. 1st Dist. 2017\)](#).

**[END OF SUPPLEMENT]**

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Footnotes

- <sup>1</sup> [State ex rel. Conservation Commission v. LePage, 566 S.W.2d 208 \(Mo. 1978\)](#).
- <sup>2</sup> [Molter v. Department of Treasury, 443 Mich. 537, 505 N.W.2d 244 \(1993\)](#).
- <sup>3</sup> [McBreairty v. Commissioner of Administrative and Financial Services, 663 A.2d 50, 102 Ed. Law Rep. 1139 \(Me. 1995\)](#); [Davis v. County of Greenville, 313 S.C. 459, 443 S.E.2d 383 \(1994\)](#).
- <sup>4</sup> [Davis v. County of Greenville, 313 S.C. 459, 443 S.E.2d 383 \(1994\)](#).
- <sup>5</sup> [Decatur Tax Payers League, Inc. v. Adams, 236 Ga. 871, 226 S.E.2d 69 \(1976\)](#).
- <sup>6</sup> [Walker v. Zuehlke, 642 N.W.2d 745 \(Minn. 2002\)](#).
- <sup>7</sup> [McBreairty v. Commissioner of Administrative and Financial Services, 663 A.2d 50, 102 Ed. Law Rep. 1139 \(Me. 1995\)](#).

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### B. Classification and Discrimination, in General

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1012, 1032, 1040, 3043, 3057, 3555, 3560, 3561, 3562, 3564, 3566, 3568, 3570, 3576, 3580

West's Key Number Digest, [Taxation](#) 🔑 2013, 2100, 2121, 2127, 2128, 2130, 2135, 2136, 2139, 2140, 2723

### A.L.R. Library

A.L.R. Index, Constitutional Law

A.L.R. Index, Taxes

West's A.L.R. Digest, [Constitutional Law](#) 🔑 1012, 1032, 1040, 3043, 3057, 3555, 3560, 3561, 3562, 3564, 3566, 3568, 3570, 3576, 3580

West's A.L.R. Digest, [Taxation](#) 🔑 2013, 2100, 2121, 2127, 2128, 2130, 2135, 2136, 2139, 2140, 2723

### Trial Strategy

[Challenge to Tax Assessment of Residential Property, 115 Am. Jur. Proof of Facts 3d 203](#)

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property, 28 Am. Jur. Proof of Facts 3d 439](#)

[Overassessment of Income-producing Property—Neighborhood Shopping Center, 3 Am. Jur. Proof of Facts 2d 1](#)

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## 71 Am. Jur. 2d State and Local Taxation § 107

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### B. Classification and Discrimination, in General

## § 107. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3043, 3560

West's Key Number Digest, [Taxation](#) 🔑 2013, 2135

### Trial Strategy

[Challenge to Tax Assessment of Residential Property](#), 115 Am. Jur. Proof of Facts 3d 203

[Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property](#), 28 Am. Jur. Proof of Facts 3d 439

[Overassessment of Income-producing Property—Neighborhood Shopping Center](#), 3 Am. Jur. Proof of Facts 2d 1

The United States Constitution does not require uniformity among separate tax classes.<sup>1</sup> In taxation, even more than in other fields, legislatures possess the greatest freedom in classification.<sup>2</sup> A State may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable,<sup>3</sup> and the taxes imposed are uniform within the class.<sup>4</sup> However, a state's constitutional uniformity clause may be violated by improper discrimination in the imposition of taxes.<sup>5</sup> The phrase "classification of property" for tax purposes means putting property of a certain nature into one class and other property into a different class and then taxing such classes differently either by prescribing a different tax rate as to each or by assessing the classes at different percentages of value.<sup>6</sup> The classification and subclassification of property is constitutional if it is based on the nature and characteristics of the property rather than on the nature, residence, or business of the respective owners or on amounts owned by them.<sup>7</sup> Although the legislature is accorded great latitude in the establishment of tax classifications,<sup>8</sup> and a discriminatory tax classification will pass constitutional muster if any conceivable state of facts will support or provide a rational basis for the classification,<sup>9</sup> a tax classification statute will be declared unconstitutional if the difference in treatment constitutes invidious discrimination or is palpably arbitrary.<sup>10</sup>

Unjust discrimination in taxation violates both a state constitutional provision requiring that all taxes upon real and personal estate be apportioned and assessed equally according to the just value thereof and the Equal Protection Clause.<sup>11</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

The General Assembly has especially broad latitude in creating classifications and distinctions in tax statutes, and accordingly, where a tax classification is not palpably arbitrary and is supported by a plausible policy reason, it will not be struck down and violative of equal protection. *U.S. Const. Amend. 14, § 1*; *Colo. Const. art. 2, § 25*. *Qwest Corporation v. Colorado Division of Property Taxation*, 2013 CO 39, 304 P.3d 217 (Colo. 2013).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> *Fairbanks North Star Borough Assessor's Office v. Golden Heart Utilities, Inc.*, 13 P.3d 263 (Alaska 2000); *Children's Psychiatric Hosp. of Northern Kentucky, Inc. v. Revenue Cabinet, Com. of Ky.*, 989 S.W.2d 583 (Ky. 1999).
- <sup>2</sup> *Coors Brewing Co. v. Mendez-Torres*, 787 F. Supp. 2d 149 (D.P.R. 2011).
- <sup>3</sup> *Allegheny Pittsburgh Coal Co. v. County Com'n of Webster County, W. Va.*, 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989); *Estate of Kosakowski v. Director, Div. of Taxation*, 26 N.J. Tax 21, 2011 WL 1573849 (2011).
- <sup>4</sup> *Allegheny Pittsburgh Coal Co. v. County Com'n of Webster County, W. Va.*, 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989).
- <sup>5</sup> *Wells v. City of Baldwin*, 275 Ga. 228, 565 S.E.2d 439 (2002).
- <sup>6</sup> *Metal Form Corp. v. Leachman*, 599 S.W.2d 922 (Mo. 1980).
- <sup>7</sup> *Westling v. County of Mille Lacs*, 581 N.W.2d 815 (Minn. 1998).
- <sup>8</sup> *Strong v. State Bd. of Equalization*, 155 Cal. App. 4th 1182, 66 Cal. Rptr. 3d 657 (3d Dist. 2007); *Horizon Blue Cross Blue Shield of New Jersey v. State*, 25 N.J. Tax 290, 2009 WL 5707108 (2009), *aff'd*, 2012 WL 715965 (N.J. Super. Ct. App. Div. 2012).
- <sup>9</sup> *Jensen v. Franchise Tax Bd.*, 178 Cal. App. 4th 426, 100 Cal. Rptr. 3d 408 (2d Dist. 2009), *review denied*, (Jan. 21, 2010); *Markley v. Department of Public Utility Control*, 301 Conn. 56, 23 A.3d 668 (2011); *Minnesota Automatic Merchandising Council v. Salomone*, 682 N.W.2d 557 (Minn. 2004).
- <sup>10</sup> *Terminello v. Village of Piermont*, 92 A.D.3d 673, 938 N.Y.S.2d 162 (2d Dep't 2012); *Appeal of Springmoor, Inc.*, 348 N.C. 1, 498 S.E.2d 177 (1998); *Mathias v. Department of Revenue, State of Or.*, 312 Or. 50, 817 P.2d 272 (1991). As to the legislative power to enact tax legislation, see § 57.
- <sup>11</sup> *Ram's Head Partners, LLC v. Town of Cape Elizabeth*, 2003 ME 131, 834 A.2d 916 (Me. 2003).



## 71 Am. Jur. 2d State and Local Taxation § 108

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### B. Classification and Discrimination, in General

## § 108. Permissible bases of classification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3560

West's Key Number Digest, [Taxation](#) 🔑 2100, 2135, 2136

A tax is “discriminatory” if it is imposed unequally upon similarly situated groups.<sup>1</sup> Where the benefit received and the burden imposed by a tax is palpably disproportionate, the tax constitutes a taking without due process under the 14th Amendment to the United States Constitution and is an arbitrary form of classification in violation of federal equal protection and state uniformity standards.<sup>2</sup> However, if a classification of property for tax purposes is neither arbitrary nor capricious, and rests upon some reasonable consideration of difference or policy, there is no denial of equal protection.<sup>3</sup> As also stated, a classification for tax purposes is valid when it is based upon some legitimate distinction between the classes that provides a non-arbitrary and reasonable and just basis for the different treatment.<sup>4</sup>

A state tax law is not arbitrary although it discriminates in favor of a certain class if the discrimination is founded upon a reasonable distinction, or difference in state policy, not in conflict with the Federal Constitution.<sup>5</sup> Reasonable distinctions may be made between residents and nonresidents<sup>6</sup> or corporations and other businesses.<sup>7</sup> As between corporations, different assessment ratios may be implemented based on proper class distinctions recognizing the inherent differences between various types of common carriers.<sup>8</sup> Public service property may be a distinct category for taxation purposes,<sup>9</sup> and railroads and airlines may constitute a distinct subclass of public service corporations whose property can be valued with a different assessment ratio than is applied to property of other public service corporations.<sup>10</sup> Similarly, insurance companies may be treated differently from general business corporations for the purpose of insuring prompt payment of taxes on net premiums and annuity considerations and on interest and dividends.<sup>11</sup>

### CUMULATIVE SUPPLEMENT

**Cases:**

Selective reassessments of individual property satisfy equal protection when justified by a legally recognized factor and if the methodology used can be uniformly applied to all similar properties. [U.S.C.A. Const.Amend. 14](#); [McKinney's Const. Art. 1, § 11](#). [Karmel v. Assessor of City of White Plains](#), 36 Misc. 3d 845, 950 N.Y.S.2d 674 (Sup 2012).

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**Footnotes**

- <sup>1</sup> [Preston v. Johnson County Fiscal Court](#), 27 S.W.3d 790 (Ky. 2000); [Westcott Communications, Inc. v. Strayhorn](#), 104 S.W.3d 141 (Tex. App. Austin 2003).
- <sup>2</sup> [Opinion of the Justices](#), 132 N.H. 777, 584 A.2d 1342 (1990); [Bold Corp. v. County of Lancaster](#), 569 Pa. 107, 801 A.2d 469 (2002).
- <sup>3</sup> [Allegheny Pittsburgh Coal Co. v. County Com'n of Webster County](#), W. Va., 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989); [Opinion of the Justices](#), 925 So. 2d 193 (Ala. 2006).
- <sup>4</sup> [Barrel of Monkeys, LLC v. Allegheny County](#), 2012 WL 386470 (Pa. Commw. Ct. 2012).
- <sup>5</sup> [Kahn v. Shevin](#), 416 U.S. 351, 94 S. Ct. 1734, 40 L. Ed. 2d 189 (1974).
- <sup>6</sup> [Rajterowski v. City of Sycamore](#), 405 Ill. App. 3d 1086, 346 Ill. Dec. 313, 940 N.E.2d 682, 263 Ed. Law Rep. 900 (2d Dist. 2010), [appeal denied](#), 239 Ill. 2d 589, 348 Ill. Dec. 199, 943 N.E.2d 1109 (2011); [Aucella v. Town of Winslow](#), 628 A.2d 120 (Me. 1993); [Dennis v. Summit County](#), 933 P.2d 387 (Utah 1997).
- <sup>7</sup> [Morning Star Co. v. Board of Equalization](#), 201 Cal. App. 4th 737, 135 Cal. Rptr. 3d 457 (3d Dist. 2011), [review denied](#), (Mar. 21, 2012).
- <sup>8</sup> [Delta Air Lines, Inc. v. Com., Revenue Cabinet](#), 689 S.W.2d 14 (Ky. 1985).
- <sup>9</sup> [McLoud Telephone Co. v. State Bd. of Equalization for State of Oklahoma](#), 1982 OK 154, 655 P.2d 1037 (Okla. 1982).
- <sup>10</sup> [Williams Natural Gas Co. v. State Bd. of Equalization](#), 1994 OK 150, 891 P.2d 1219 (Okla. 1994).
- <sup>11</sup> [Hartford Fire Ins. Co. v. Brown](#), 164 Conn. 497, 325 A.2d 228 (1973).



## 71 Am. Jur. 2d State and Local Taxation § 109

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

#### B. Classification and Discrimination, in General

## § 109. Relationship to legislative objective

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3355, 3561, 3562, 3570, 3576, 3580

West's Key Number Digest, [Taxation](#) 🔑 2100, 2135, 2136

### A.L.R. Library

[Validity, construction, and effect of state statutes affording preferential property tax treatment to land used for agricultural purposes, 98 A.L.R.3d 916](#)

In reviewing the constitutionality of a tax classification, there is a threshold requirement that the scheme be motivated by a legitimate, permissible state purpose.<sup>1</sup> Classification schemes creating disparate tax treatment which are justified by a legitimate state purpose and are rationally related to effectuating that valid purpose will withstand federal constitutional attack.<sup>2</sup> Legitimate state purposes that have been recognized by the courts include local neighborhood preservation, continuity, and stability;<sup>3</sup> providing revenues for the functioning of government;<sup>4</sup> preventing revenue loss from changes in the federal estate tax law;<sup>5</sup> protecting state title insurers by pressuring other states to keep their premium taxes low;<sup>6</sup> strengthening and preserving family relationships;<sup>7</sup> taxing only nonresident income derived from resident state sources;<sup>8</sup> preventing the proliferation of crime and raising revenue to cover the costs of regulation;<sup>9</sup> acquiring a greater degree of regulatory control over insurance companies;<sup>10</sup> limiting the total taxes that could be levied on property;<sup>11</sup> cleaning up environmental contamination;<sup>12</sup> and preserving agricultural land.<sup>13</sup> A rule applying a property tax reduction factor to homeowners whose property includes up to three additional dwelling units, but does not apply such a factor to homeowners whose property includes more than three dwelling units, is rationally related to a state policy of providing tax relief to small property owners and agricultural landowners whose property values are appreciating more rapidly than other properties containing at least four units.<sup>14</sup>

Fairness and equity are not the principal criteria against which the validity of tax statutes is to be determined, and in challenging a classification made by the legislature in a tax statute, it seldom suffices that the application of a particular statute or regulation works an inequity in the distribution of benefits.<sup>15</sup> Thus, even if a classification scheme is imperfectly related to the legislature's objectives, such imperfection is not necessarily a constitutional defect under an equal protection and a uniformity clause analysis.<sup>16</sup>

Promotion of domestic business within a state, by discriminating against foreign corporations wishing to compete by doing business there, is not a legitimate state purpose under the Equal Protection Clause.<sup>17</sup> It also is not a legitimate state purpose to reward certain citizens for past contributions to the detriment of other citizens.<sup>18</sup>

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#### Footnotes

- <sup>1</sup> Sun Life Assur. Co. of Canada v. Manna, 368 Ill. App. 3d 591, 306 Ill. Dec. 706, 858 N.E.2d 503 (1st Dist. 2006), judgment aff'd, 227 Ill. 2d 128, 316 Ill. Dec. 253, 879 N.E.2d 320 (2007); Chicago Pacific Corp. v. Limbach, 65 Ohio St. 3d 432, 1992-Ohio-10, 605 N.E.2d 8 (1992).
- <sup>2</sup> Council of Independent Tobacco Mfrs. of America v. State, 685 N.W.2d 467 (Minn. Ct. App. 2004), aff'd, 713 N.W.2d 300 (Minn. 2006); Verizon New England, Inc. v. City of Rochester, 156 N.H. 624, 940 A.2d 237 (2007); Hoffer v. Department of Taxes, 177 Vt. 537, 2004 VT 86, 861 A.2d 1085 (2004).
- <sup>3</sup> Nordlinger v. Hahn, 505 U.S. 1, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992); Columbus-Muscogee County Consol. Government v. CM Tax Equalization, Inc., 276 Ga. 332, 579 S.E.2d 200 (2003).
- <sup>4</sup> Opinion of the Justices, 142 N.H. 102, 697 A.2d 125 (1997).
- <sup>5</sup> Estate of Kosakowski v. Director, Div. of Taxation, 26 N.J. Tax 21, 2011 WL 1573849 (2011).
- <sup>6</sup> First American Title Ins. Co. v. Combs, 258 S.W.3d 627 (Tex. 2008).
- <sup>7</sup> Estate of Robitaille v. New Hampshire Dept. of Revenue Admin., 149 N.H. 595, 827 A.2d 981 (2003).
- <sup>8</sup> Huckaby v. New York State Div. of Tax Appeals, 4 N.Y.3d 427, 796 N.Y.S.2d 312, 829 N.E.2d 276 (2005).
- <sup>9</sup> Fraternal Order of Police v. South Carolina Dept. of Revenue, 352 S.C. 420, 574 S.E.2d 717 (2002).
- <sup>10</sup> Gallagher v. Motors Ins. Corp., 605 So. 2d 62 (Fla. 1992).
- <sup>11</sup> Savage v. Munn, 317 Or. 283, 856 P.2d 298 (1993).
- <sup>12</sup> Westling v. County of Mille Lacs, 581 N.W.2d 815 (Minn. 1998).
- <sup>13</sup> Ruberto v. County of Washington, 572 N.W.2d 293 (Minn. 1997).  
As to exemptions from taxation of land used for agricultural purposes, see § 239.  
As to preferential tax treatment of land used for agricultural purposes, see Am. Jur. 2d, Agriculture § 8.
- <sup>14</sup> Town of Tonawanda v. Ayler, 68 N.Y.2d 836, 508 N.Y.S.2d 171, 500 N.E.2d 869 (1986); Ohio Apt. Assn. v. Levin, 127 Ohio St. 3d 76, 2010-Ohio-4414, 936 N.E.2d 919 (2010).
- <sup>15</sup> Community Memorial Home at Osakis, Minnesota, Inc. v. County of Douglas, 573 N.W.2d 83 (Minn. 1997); Twiford v. Nueces County Appraisal Dist., 725 S.W.2d 325 (Tex. App. Corpus Christi 1987), writ refused n.r.e., (Apr. 22, 1987).
- <sup>16</sup> Westling v. County of Mille Lacs, 581 N.W.2d 815 (Minn. 1998).
- <sup>17</sup> Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869, 105 S. Ct. 1676, 84 L. Ed. 2d 751 (1985).

<sup>18</sup> [Osterndorf v. Turner, 426 So. 2d 539 \(Fla. 1982\).](#)

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## 71 Am. Jur. 2d State and Local Taxation § 110

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

#### B. Classification and Discrimination, in General

## § 110. Rational basis standard

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3043, 3057, 3566, 3568, 3580

West's Key Number Digest, [Taxation](#) 🔑 2135

The rational basis test is the appropriate standard of review of classifications made for tax purposes<sup>1</sup> to determine whether a tax satisfies the constitutional requirements that it be uniform, based on a real and substantial difference between the classes, and bears some reasonable relationship to the object of the legislation or to public policy.<sup>2</sup> Under the rational basis test, a statutory classification will be upheld against a constitutional challenge under the Federal Equal Protection Clause<sup>3</sup> and the state uniformity clauses if the statutory classification is reasonably related to a legitimate state purpose,<sup>4</sup> and all persons within a class are treated in the same manner.<sup>5</sup> As also stated, the courts will uphold laws if they serve a legitimate public purpose and impose only the classifications that bear a fair and substantial relationship to that purpose.<sup>6</sup>

A State may impose different specific taxes on different trades and professions and may vary the rate of excise upon the various products, and it is not required to resort to close distinctions or to maintain precise scientific uniformity with reference to composition, use, or value.<sup>7</sup> Thus, where there is inequity in taxing the structures of insurance entities, excluding insurers from a tax cap amendment does not violate equal protection or due process principles.<sup>8</sup> If the methods and character of businesses differ, such differences may be a valid basis for tax classification.<sup>9</sup>

A classification of property according to its use is valid and constitutional for tax purposes.<sup>10</sup> Thus, it is reasonable to treat land suitable for commercial timber production differently from land not so suited.<sup>11</sup> A distinction between owners and renters reflects a genuine distinction between owner-occupiers and renter-occupiers based on the added responsibility of homeowners and their different relation to their property.<sup>12</sup> Similarly, a division of property taxpayers into those who occupy premises and those who do not occupy premises is constitutional where the division of real property into two classes alleviates unfair tax burdens.<sup>13</sup>

The constitutionality of a taxation classification depends upon the physical and functional characteristics of the property itself.<sup>14</sup> Agricultural and nonagricultural property may be separated into distinct classes for tax purposes,<sup>15</sup> hazardous waste

products may be taxed differently than hazardous materials,<sup>16</sup> and refined petroleum products constitute a legitimate classification of property.<sup>17</sup> In addition, statutes treating tangible and intangible personalty as different classes of property for ad valorem tax purposes are constitutional.<sup>18</sup>

Administrative concerns may provide a legitimate, rational basis for legislative classification.<sup>19</sup> Thus, administrative convenience and expense in the measurement or the collection of taxes justify a difference in treatment among classes of taxpayers.<sup>20</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Whether a taxation statute violates the equal and uniform clause of the New Mexico Constitution requires a court to determine whether (1) there is a rational basis for the classification, (2) there is a substantial difference between the legislatively drawn categories, and (3) the classification for taxation is reasonable, and (4) the tax is uniform and equal on all subjects of a class. West's [NMSA Const. Art. 8, § 1\(A\)](#). [Pinghua Zhao v. Montoya](#), 2014-NMSC-025, 329 P.3d 676 (N.M. 2014).

A taxpayer who believes he has been subjected to unequal taxation due to an allegedly unconstitutional statute must demonstrate: (1) the enactment results in some form of classification; and (2) such classification is unreasonable and not rationally related to any legitimate state purpose. Const. [Art. 8, § 1](#). [Lebanon Valley Farmers Bank v. Com.](#), 83 A.3d 107 (Pa. 2013).

Inclusion of various exemptions, classifications, and special deductions in state franchise tax did not violate state constitutional provision requiring equal and uniform taxation; legislature's structuring of franchise tax in that manner instead was reasonably related to object of treating like taxpayers alike. [Vernon's Ann. Texas Const. Art. 8, § 1](#). [In re Nestle USA, Inc.](#), 387 S.W.3d 610 (Tex. 2012).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Fitzgerald v. Racing Ass'n of Central Iowa](#), 539 U.S. 103, 123 S. Ct. 2156, 156 L. Ed. 2d 97 (2003); [Lot 04B & 5C, Block 83 Townsite v. Fairbanks North Star Borough](#), 208 P.3d 188 (Alaska 2009); [Jensen v. Franchise Tax Bd.](#), 178 Cal. App. 4th 426, 100 Cal. Rptr. 3d 408 (2d Dist. 2009), review denied, (Jan. 21, 2010); [Qwest Corp. v. Colorado Div. of Property Taxation](#), Dept. of Local Affairs, 2011 WL 3332876 (Colo. App. 2011); [In re County Treasurer](#), 356 Ill. App. 3d 1102, 292 Ill. Dec. 997, 827 N.E.2d 526 (4th Dist. 2005); [In re Garden City Medical Clinic, P.A.](#), 36 Kan. App. 2d 114, 137 P.3d 1058 (2006); [USGen New England, Inc. v. Town of Rockingham](#), 176 Vt. 104, 2003 VT 102, 838 A.2d 927 (2003).
- <sup>2</sup> [Nordlinger v. Hahn](#), 505 U.S. 1, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992); [Empress Casino Joliet Corp. v. Giannoulis](#), 231 Ill. 2d 62, 324 Ill. Dec. 491, 896 N.E.2d 277 (2008).
- <sup>3</sup> U.S. Const. Amend. XIV.
- <sup>4</sup> [W.A. Foote Memorial Hosp. v. City of Jackson](#), 262 Mich. App. 333, 686 N.W.2d 9 (2004); [Kottel v. State](#), 2002 MT 278, 312 Mont. 387, 60 P.3d 403 (2002); [Silver State Elec. Supply Co. v. State ex rel. Dept. of Taxation](#), 123 Nev. 80, 157 P.3d 710 (2007).
- <sup>5</sup> [Kottel v. State](#), 2002 MT 278, 312 Mont. 387, 60 P.3d 403 (2002); [City of Harrisburg v. School Dist. of City of](#)

Harrisburg, 551 Pa. 295, 710 A.2d 49, 126 Ed. Law Rep. 252 (1998).

6 Lot 04B & 5C, Block 83 Townsite v. Fairbanks North Star Borough, 208 P.3d 188 (Alaska 2009).

7 Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S. Ct. 1001, 35 L. Ed. 2d 351 (1973).

8 Horizon Blue Cross Blue Shield of New Jersey v. State, 25 N.J. Tax 290, 2009 WL 5707108 (2009), *aff'd*, 2012 WL 715965 (N.J. Super. Ct. App. Div. 2012).

9 Cox Cable Hampton Roads, Inc. v. City of Norfolk, 247 Va. 64, 439 S.E.2d 366 (1994).

10 North Country Environmental Services v. State, 157 N.H. 15, 943 A.2d 786 (2008); Jarvill v. City of Eugene, 289 Or. 157, 613 P.2d 1 (1980).

11 Bryant v. Seagraves, 270 Or. 16, 526 P.2d 1027 (1974).

12 Lund v. Hennepin County, 403 N.W.2d 617 (Minn. 1987).

13 Lund v. Hennepin County, 403 N.W.2d 617 (Minn. 1987); *In re Property of One Church Street City of Burlington*, 152 Vt. 260, 565 A.2d 1349 (1989).

14 Opinion of the Justices, 142 N.H. 102, 697 A.2d 125 (1997).

15 Ruberto v. County of Washington, 572 N.W.2d 293 (Minn. 1997); Thares v. Brown County Bd. of Equalization, 2000 SD 114, 616 N.W.2d 380 (S.D. 2000).

16 Circuit-Wise, Inc. v. Commissioner of Revenue Services, 215 Conn. 292, 576 A.2d 1259 (1990).

17 *In re Opinion of the Justices*, 114 N.H. 174, 317 A.2d 568 (1974).

18 Florida Dept. of Revenue v. Howard, 916 So. 2d 640 (Fla. 2005); Sperry Corp. v. State Tax Com'n, 695 S.W.2d 464 (Mo. 1985).

19 Chicago Freight Car Leasing Co. v. Limbach, 62 Ohio St. 3d 489, 584 N.E.2d 690 (1992); Sandy Springs Water Co. v. Department of Health and Environmental Control, 324 S.C. 177, 478 S.E.2d 60 (1996).

20 United Illuminating Co. v. City of New Haven, 179 Conn. 627, 427 A.2d 830 (1980).

## 71 Am. Jur. 2d State and Local Taxation § 111

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Two. Power to Tax and Constitutional Limitations Thereon


#### VIII. Equality and Uniformity

#### B. Classification and Discrimination, in General

## § 111. Discrimination as to rate or amount

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2127, 2135

All taxes imposed by the legislature, or a political subdivision, must be uniform in rate within each taxing district.<sup>1</sup> There is a violation of constitutional rights if the effective tax rate results in an unequal tax burden.<sup>2</sup> Taxation satisfies the constitutional provisions requiring uniformity and proportionality only when a lawfully adopted, generally applicable tax rate is applied to the property's market value, and the appraisal and assessment follow the procedures provided by law.<sup>3</sup> The Equal Protection Clause of the Federal Constitution<sup>4</sup> does not prevent a State from imposing different rates of taxation on different classes of persons or property.<sup>5</sup> Moreover, statutes taxing slot machine revenues on excursion riverboats at a lower rate than slot machine revenues at racetracks do not violate the Federal Constitution's Equal Protection Clause where there are various rational objectives for the law.<sup>6</sup> The constitutional requirements of uniformity and equality in taxation are not violated by valuing differently otherwise identical properties if disparate values result from disparate revenue-generating capabilities.<sup>7</sup> Thus, disparate tax treatment of residential, industrial, and farming property under state law is rationally based on the objective of taxing income-producing property at a higher rate than owner-occupied residences and farms and does not violate the Equal Protection Clause.<sup>8</sup>

Discrimination is constitutionally impermissible only if it is invidious in nature.<sup>9</sup> A taxpayer may obtain relief only by showing that his or her property has been assessed at a different proportion of true value than the rest of the property within the same class in the taxing district.<sup>10</sup> Moreover, under a state constitutional provision which limits the taxation of real property owned by a local government and located outside its jurisdictional boundary, real property owned by the local government and located outside its boundaries cannot be assessed at a higher value than the value at which those same lands would be assessed if owned by a private landowner.<sup>11</sup>

### Practice Tip:

On a challenge to a real property tax assessment for lack of uniformity, it is insufficient to show that the assessment is excessive as compared with the assessment of other property; rather, it must plainly appear that the assessment is out of line with the methods of valuation adopted in the taxing district as a whole.<sup>12</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Six-year property tax cycle mandated by statute, as applied to taxpayer, did not violate taxpayer's right to equal protection; taxpayer began the six-year tax cycle with tax liability based on 100% of its property value, the Department of Revenue treated taxpayer like other similarly situated property owners when it assessed taxpayer's property value, and fact that taxpayer's property might have declined in value during the six-year cycle, and that taxpayer might pay taxes for some portion of the remainder of the six-year cycle on a valuation greater than 100% of its property value did not violate taxpayer's right to equal protection. [U.S.C.A. Const.Amend. 14](#); Const. Art. 2, § 4; MCA 15–7–111. [Covenant Investments, Inc. v. State, Dept. of Revenue, 2013 MT 215, 371 Mont. 186, 308 P.3d 54 \(2013\)](#).

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### Footnotes

- <sup>1</sup> [Westfield Golf Practice Center, LLC v. Washington Tp. Assessor, 859 N.E.2d 396 \(Ind. Tax Ct. 2007\)](#); [Summit Water Distribution Co. v. Utah State Tax Com'n, 2011 UT 43, 259 P.3d 1055 \(Utah 2011\)](#); [Garbitelli v. Town of Brookfield, 2011 VT 122, 2011 WL 5248295 \(Vt. 2011\)](#); [Allright Properties, Inc. v. City of Milwaukee, 317 Wis. 2d 228, 2009 WI App 46, 767 N.W.2d 567 \(Ct. App. 2009\)](#).
- <sup>2</sup> [Dolan v. Land, 667 S.W.2d 684 \(Ky. 1984\)](#).
- <sup>3</sup> [Fort Worth Independent School Dist. v. City of Fort Worth, 22 S.W.3d 831 \(Tex. 2000\)](#).
- <sup>4</sup> [U.S. Const. Amend. XIV](#).
- <sup>5</sup> [Brookside Estates v. State Tax Com'n of Missouri, 849 S.W.2d 29 \(Mo. 1993\)](#); [GTE North, Inc. v. Zaino, 96 Ohio St. 3d 9, 2002-Ohio-2984, 770 N.E.2d 65 \(2002\)](#); [Savage v. Munn, 317 Or. 283, 856 P.2d 298 \(1993\)](#).
- <sup>6</sup> [Fitzgerald v. Racing Ass'n of Central Iowa, 539 U.S. 103, 123 S. Ct. 2156, 156 L. Ed. 2d 97 \(2003\)](#).
- <sup>7</sup> [Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356 \(Miss. 1989\)](#).
- <sup>8</sup> [Castlewood, Inc. v. Anderson County, 969 S.W.2d 908 \(Tenn. 1998\)](#).
- <sup>9</sup> [Karlsberg v. Tax Appeals Tribunal of State, 85 A.D.3d 1347, 925 N.Y.S.2d 237 \(3d Dep't 2011\)](#), appeal dismissed, 17 N.Y.3d 900, 933 N.Y.S.2d 649, 957 N.E.2d 1153 (2011); [Savage v. Munn, 317 Or. 283, 856 P.2d 298 \(1993\)](#).
- <sup>10</sup> [Shaughnesy v. Michigan Tax Tribunal, 420 Mich. 246, 362 N.W.2d 219 \(1984\)](#); [Zabawa v. Douglas County Bd. of Equalization, 17 Neb. App. 221, 757 N.W.2d 522 \(2008\)](#).
- <sup>11</sup> [County of Los Angeles v. State Bd. of Equalization, 105 Cal. App. 4th 1, 129 Cal. Rptr. 2d 209 \(4th Dist. 2003\)](#).



- <sup>12</sup> Baechtold v. Monroe County Bd. of Assessment Appeals, 804 A.2d 713 (Pa. Commw. Ct. 2002); County of Mecklenburg v. Carter, 248 Va. 522, 449 S.E.2d 810 (1994).

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## 71 Am. Jur. 2d State and Local Taxation § 112

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### B. Classification and Discrimination, in General

## § 112. Discrimination as to mode of assessment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3564

West's Key Number Digest, [Taxation](#) 🔑 2128, 2135

### Trial Strategy

[Overassessment of Income-producing Property—Neighborhood Shopping Center, 3 Am. Jur. Proof of Facts 2d 1](#)

Uniformity in taxation implies equality in the burden of taxation.<sup>1</sup> The constitutional mandate for uniformity in tax assessment requires uniformity in the assessment of the same kind of property, or properties having like characteristics and qualities, located in the same area.<sup>2</sup> A uniform assessment requires the taxing authority to apply the same ratio of assessed value to market value to all real estate within the taxing authority's jurisdiction.<sup>3</sup> Thus, if the basis of valuation is the true market value of the property, then that basis must be applied to all alike; if the basis is a certain percent of the true market value, the same percentage must be applied to all alike.<sup>4</sup> It is unfair, and constitutionally prohibited, to require one taxpayer to pay a tax based on market values if other taxpayers are paying a rate that is lower than the market value of their properties.<sup>5</sup> Uniformity is satisfied when a taxing authority assesses all property in the taxing district at the same percentage of its actual value.<sup>6</sup>

Taxpayers are entitled to have their property assessed uniformly and proportionately even though the result may be that it is assessed at less than the actual value.<sup>7</sup> Due to inherent lack of precision in the assessment process, if it is impossible to achieve perfectly both a standard of true or market value and a standard of uniformity and equality, the latter standard should prevail.<sup>8</sup>

A state's constitutional provisions governing property taxation, allegedly adopted for the racially discriminatory purpose of restricting the ability of black voters to influence property tax policy through the ordinary lawmaking processes, does not violate the 14th Amendment by restricting black citizens' full participation in the political process where the state's property tax structure uniformly affects all state citizens regardless of race and burdens all of the constituency by making it difficult to influence or change the property tax structure.<sup>9</sup>

**Practice Tip:**

An equal protection violation as a result of a property tax assessment can be established only by proof of disparity in the resulting assessment.<sup>10</sup> An aggrieved taxpayer must prove that the resulting disparity was caused by intentional, arbitrary, or systematic undervaluation of other taxpayers' properties or overvaluation of the taxpayer's own property.<sup>11</sup> However, in some jurisdictions, a uniformity challenge can no longer be brought by attempting to establish that comparable properties are underassessed compared to their fair market value.<sup>12</sup> Where a revaluation is shown to have been based on a discriminatory formula, the taxpayers are not required to demonstrate the overvaluation of each individual property to prove unjust discrimination in the assessment of property taxes.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Application of a 200% economic obsolescence factor to taxpayer's property, a 1,242-acre island with five houses and numerous outbuildings, which had the effect of raising its valuation, was treatment given to similarly situated properties, and thus it did not amount to unjust discrimination by town, as prohibited by the equal protection clause of the U.S. Constitution and the equal apportionment and assessment clause of the state constitution, despite argument that island structures were similarly situated to those on mainland property, to which the obsolescence factor was not applied; structures on all developed islands in the town were subject to the obsolescence factor, and the higher assessment of island structures was due to their higher building costs. [U.S. Const. Amend. 14](#); [Me. Const. art. 9, § 8](#). [Roque Island Gardner Homestead Corporation v. Town of Jonesport](#), 2017 ME 152, 167 A.3d 564 (Me. 2017).

Imposition of ad valorem and severance taxes on coal by setting location of mine mouth at tunnel, which was a permanent location, did not violate coal producer's constitutional right to equal and uniform taxation, even though mines with traditional truck haul systems were able to move their mine mouths by moving their ramps; producer's fixed mine mouth was due to its own business decision to rely on conveyor system through transportation network it had not reclaimed. [Wyo. Const. art. 15, § 11](#); [Wyo. Stat. Ann. §§ 39-13-103, 39-14-101\(a\)\(vi\), 39-14-103](#). [Wyodak Resources Development Corp. v. Wyoming Department of Revenue](#), 2017 WY 6, 387 P.3d 725 (Wyo. 2017).

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### Footnotes

<sup>1</sup> [The Senator, Inc. v. Ada County, Bd. of Equalization](#), 138 Idaho 566, 67 P.3d 45 (2003); [Cook County Bd. of Review v. Property Tax Appeal Bd.](#), 403 Ill. App. 3d 139, 344 Ill. Dec. 521, 937 N.E.2d 227 (1st Dist. 2010); [Board of County Com'rs of Leavenworth County v. McGraw Fertilizer Service, Inc.](#), 261 Kan. 901, 933 P.2d 698 (1997), [opinion](#)

modified on other grounds on reh'g, 261 Kan. 1082, 941 P.2d 1388 (1997).

- 2 Christian County Bd. of Review v. Property Tax Appeal Bd., 368 Ill. App. 3d 792, 306 Ill. Dec. 851, 858 N.E.2d 909 (5th Dist. 2006); Board of County Com'rs of Leavenworth County v. McGraw Fertilizer Service, Inc., 261 Kan. 901, 933 P.2d 698 (1997), opinion modified on other grounds on reh'g, 261 Kan. 1082, 941 P.2d 1388 (1997).
- 3 City of Berlin v. County of Coos, 146 N.H. 90, 767 A.2d 441 (2001); In re Sullivan, 2012 WL 75298 (Pa. Commw. Ct. 2012); Fort Worth Independent School Dist. v. City of Fort Worth, 22 S.W.3d 831 (Tex. 2000).
- 4 Welch Foods, Inc. v. Benton County, 136 Wash. App. 314, 148 P.3d 1092 (Div. 3 2006).
- 5 Harris County Appraisal Dist. v. Kempwood Plaza Ltd., 186 S.W.3d 155 (Tex. App. Houston 1st Dist. 2006).
- 6 Veas v. Carbon County Bd. of Assessment Appeals, 867 A.2d 742 (Pa. Commw. Ct. 2005).
- 7 Revenue Cabinet, Com. of Ky. v. Gillig, 957 S.W.2d 206 (Ky. 1997); Constructors, Inc. v. Cass County Bd. of Equalization, 258 Neb. 866, 606 N.W.2d 786 (2000).
- 8 Harris County Appraisal Dist. v. Kempwood Plaza Ltd., 186 S.W.3d 155 (Tex. App. Houston 1st Dist. 2006); Kennecott Copper Corp. v. Salt Lake County, 799 P.2d 1156 (Utah 1990).
- 9 Knight v. Alabama, 458 F. Supp. 2d 1273, 214 Ed. Law Rep. 1126 (N.D. Ala. 2004), judgment aff'd, 476 F.3d 1219, 216 Ed. Law Rep. 315 (11th Cir. 2007).
- 10 City of Biddeford v. Adams, 1999 ME 49, 727 A.2d 346 (Me. 1999).
- 11 In re City of Wichita, 274 Kan. 915, 59 P.3d 336 (2002); State ex rel. Ashby Road Partners, LLC v. State Tax Com'n, 297 S.W.3d 80 (Mo. 2009); Mountain America, LLC v. Huffman, 224 W. Va. 669, 687 S.E.2d 768 (2009), cert. denied, 130 S. Ct. 2377, 176 L. Ed. 2d 785 (2010).
- 12 Finter v. Wayne County Bd. of Assessment Appeals, 889 A.2d 678 (Pa. Commw. Ct. 2005) (plaintiff must show that the property owners' property is improperly assessed based on a statistical model that compares the subject property's ratio of assessed value to market value to the same ratio to all properties in the entire taxing district).
- 13 City of Biddeford v. Adams, 1999 ME 49, 727 A.2d 346 (Me. 1999).

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## 71 Am. Jur. 2d State and Local Taxation § 113

American Jurisprudence, Second Edition | May 2021 Update

### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity


#### B. Classification and Discrimination, in General

### § 113. Discrimination by assessor

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3564

West's Key Number Digest, [Taxation](#)  2121, 2128

Discrimination in valuation does not necessarily result from the terms of the tax statute but may be caused by the acts of the taxing officials and assessors.<sup>1</sup> Assessors must strive for uniformity of treatment of all properties in their districts.<sup>2</sup> Where a deviation results from assessors applying different ratios to the market value of property in the same class, the resulting tax discriminates against the individual taxed at the higher rate.<sup>3</sup> To make out a case of discrimination in fact by a tax assessor, the taxpayer must show that the assessor's system necessarily results in unequal apportionment within the relevant taxing district.<sup>4</sup> Valuations of property based upon arbitrary factors that have no relationship to the property's actual value,<sup>5</sup> or that are so grossly discriminatory that they destroy all uniformity and equality in fixing assessed valuations, are illegal.<sup>6</sup> Moreover, an assessor cannot elect to reassess only a single property within a class of similar properties as such conduct is an improper, arbitrary mode of assessment in violation of uniformity.<sup>7</sup> However, adjusting an assessment of a taxed property for legitimate reasons is an appropriate exercise of the assessor's statutory obligation and is not arbitrary or discriminatory.<sup>8</sup>

Generally, sporadic or random deviations from an established rule in connection with assessments are insufficient to violate the equal and uniform provisions.<sup>9</sup> Thus, the taxpayer must show an assessor's intentional, systematic practice of intentional or purposeful discrimination.<sup>10</sup> Intentional discrimination against a taxpayer is shown by evidence that the assessor knowingly applied a different formula to compute the aggrieved taxpayer's taxes from that generally used for all other taxpayers in similar circumstances.<sup>11</sup> Discriminatory valuation requires proof that (1) taxing officials acted deliberately and systematically and that (2) their conduct resulted in greatly disproportionate tax treatment within a particular class of property.<sup>12</sup> The deliberate and systematic conduct need not be malicious, but only purposeful, and the mere fact that the assessing officials believed their conduct was valid does not render it less vulnerable to attack as discriminatory.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

In determining whether application of a tax plan resulted in a non-uniform assessment, court must consider the effect of the tax plan upon those subject to it, rather than the government's stated label for its actions. [Va. Const. art. 10, § 1](#). [International Paper Company v. County of Isle of Wight](#), 847 S.E.2d 507 (Va. 2020).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Walsh v. Property Tax Appeal Bd.](#), 181 Ill. 2d 228, 229 Ill. Dec. 487, 692 N.E.2d 260 (1998); [Constructors, Inc. v. Cass County Bd. of Equalization](#), 258 Neb. 866, 606 N.W.2d 786 (2000); [Great Lakes Quick Lube, LP v. City of Milwaukee](#), 331 Wis. 2d 137, 2011 WI App 7, 794 N.W.2d 510 (Ct. App. 2010).
- <sup>2</sup> [Shippee v. Brick Tp.](#), 20 N.J. Tax 427, 2002 WL 31991279 (2002).
- <sup>3</sup> [Hawaii Prince Hotel Waikiki Corp. v. City and County of Honolulu](#), 89 Haw. 381, 974 P.2d 21 (1999); [Minnegasco, Inc. v. County of Carver](#), 447 N.W.2d 878 (Minn. 1989).
- <sup>4</sup> [City of Biddeford v. Adams](#), 1999 ME 49, 727 A.2d 346 (Me. 1999); [Rebelwood, Ltd. v. Hinds County](#), 544 So. 2d 1356 (Miss. 1989).
- <sup>5</sup> [Board of County Com'rs of Leavenworth County v. McGraw Fertilizer Service, Inc.](#), 261 Kan. 901, 933 P.2d 698 (1997), opinion modified on other grounds on reh'g, 261 Kan. 1082, 941 P.2d 1388 (1997); [State ex rel. Levine v. Board of Review of Village of Fox Point](#), 191 Wis. 2d 363, 528 N.W.2d 424 (1995).
- <sup>6</sup> [Board of County Com'rs of Johnson County v. Greenhaw](#), 241 Kan. 119, 734 P.2d 1125 (1987); [Appeal of Paradise Valley Country Club](#), 748 P.2d 298 (Wyo. 1988).
- <sup>7</sup> [Allright Properties, Inc. v. City of Milwaukee](#), 317 Wis. 2d 228, 2009 WI App 46, 767 N.W.2d 567 (Ct. App. 2009).
- <sup>8</sup> [Owners Maintenance Corp. v. Borough of Ft. Lee](#), 22 N.J. Tax 648, 2005 WL 3078223 (Super. Ct. App. Div. 2005).
- <sup>9</sup> [Aida Renta Trust v. Maricopa County](#), 221 Ariz. 603, 212 P.3d 941 (Ct. App. Div. 1 2009), as amended, (July 22, 2009) and review denied, (Jan. 5, 2010); [Ram's Head Partners, LLC v. Town of Cape Elizabeth](#), 2003 ME 131, 834 A.2d 916 (Me. 2003).
- <sup>10</sup> [Aileen H. Char Life Interest v. Maricopa County](#), 208 Ariz. 286, 93 P.3d 486 (2004); [Summers Chevrolet, Inc. v. Yell County](#), 310 Ark. 1, 832 S.W.2d 486 (1992); [Capital Properties, Inc. v. State](#), 749 A.2d 1069 (R.I. 1999).
- <sup>11</sup> [Town of Burnsville v. Cline](#), 188 W. Va. 510, 425 S.E.2d 186 (1992).
- <sup>12</sup> [Aida Renta Trust v. Maricopa County](#), 221 Ariz. 603, 212 P.3d 941 (Ct. App. Div. 1 2009), as amended, (July 22, 2009) and review denied, (Jan. 5, 2010).
- <sup>13</sup> [Aida Renta Trust v. Maricopa County](#), 221 Ariz. 603, 212 P.3d 941 (Ct. App. Div. 1 2009), as amended, (July 22, 2009) and review denied, (Jan. 5, 2010).



## 71 Am. Jur. 2d State and Local Taxation § 114

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### State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

#### B. Classification and Discrimination, in General

### § 114. Discrimination as to time of making assessment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3564

West's Key Number Digest, [Taxation](#) 🔑 2130

A cyclical tax revaluation plan is violative of constitutional equality and uniformity standards only where its implementation results in intentional discrimination, arbitrary action, constructive fraud, or grossly and relatively unfair assessments.<sup>1</sup> However, a proposed constitutional amendment regarding reappraisals of property for tax purposes, which amendment would result in the residents of one county facing property tax reappraisals every four years while the residents in every other county would face reappraisals every year, does not violate the Federal Due Process Clause.<sup>2</sup>

All property which is to be revalued in a separate taxing district must be placed upon tax rolls at new valuations at the same time.<sup>3</sup> However, the temporary existence of differences in valuation between taxing districts, which result from a systematic and cyclical tax revaluation plan which was designed to implement the constitutional mandate of substantial uniformity, does not constitute unconstitutional discrimination in the absence of a showing that the conduct amounts to an intentional violation of the essential principle of practical uniformity.<sup>4</sup>

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#### Footnotes

<sup>1</sup> Nuttall v. Leffingwell, 193 Colo. 137, 563 P.2d 356 (1977); Sator v. State Dept. of Revenue, 89 Wash. 2d 338, 572 P.2d 1094 (1977); State ex rel. Ft. Howard Paper Co. v. State Lake Dist. Bd. of Review, 82 Wis. 2d 491, 263 N.W.2d 178 (1978).

<sup>2</sup> Opinion of the Justices, 925 So. 2d 193 (Ala. 2006).

<sup>3</sup> Bethke v. Brown County, 301 Minn. 380, 223 N.W.2d 757 (1974).



<sup>4</sup> Nuttall v. Leffingwell, 193 Colo. 137, 563 P.2d 356 (1977); Patterson v. State, Dept. of Revenue, 171 Mont. 168, 557 P.2d 798 (1976); Recanzone v. Nevada Tax Commission, 92 Nev. 302, 550 P.2d 401 (1976).

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## 71 Am. Jur. 2d State and Local Taxation § 115

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

#### B. Classification and Discrimination, in General

### § 115. Uniformity as to same locality

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2139, 2140

#### A.L.R. Library

[Validity of statutory classifications based on population—tax statutes, 98 A.L.R.3d 1083](#)

The principle of uniformity in taxation is that uniformity must be coextensive with the territory, or district, to which it applies.<sup>1</sup> Uniformity of taxation provisions require that a levy for county purposes must be uniform within such county and that a levy for state purposes must be uniform throughout the state.<sup>2</sup>

As long as all property within a given tax district is assessed at a uniform rate, and the benefit from such tax is for a public purpose within the district, the constitutional requirement of equality of taxation is fulfilled even if the local rate prescribed by the legislature in one district differs from that prescribed in another district.<sup>3</sup> Thus, a county, town, city, or smaller district receiving a special benefit from a public improvement may be required to shoulder a greater tax burden as long as the burden is proportional to the benefit received.<sup>4</sup>

A classification of subjects for taxation based on geographical location is constitutionally permissible if it is also based upon qualitative differences that distinguish the geographical area from other areas within the territorial limits of the authority levying the tax.<sup>5</sup> Accordingly, although a law limited to a given county is prohibited unless there are inherent characteristics of the affected locale that justify local legislation, if the affected county reflects unique circumstances that rationally justify the legislation, then the general law is not applicable elsewhere and the constitution is not violated.<sup>6</sup> However, a taxing authority may not single out a subterritory for exclusive tax treatment, either taxation or exemption, if that subterritory is

indistinguishable from the rest of the territory.<sup>7</sup> There must be a rational reason for deliberately imposing a demonstrably different tax burden on similar properties because of their different geographical locations.<sup>8</sup> Thus, if the taxing authority selects a subterritory for taxation and that subterritory is the only area so taxed, then the subterritory must not only be qualitatively different but must also be unique.<sup>9</sup>

The fact that a local law distinguishes between taxpayers based on the size of an individual taxpayer's property<sup>10</sup> or the size of the population does not per se render an enactment unconstitutional unless there is no rational basis for the classifications.<sup>11</sup>

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#### Footnotes

- <sup>1</sup> Department of Local Government Finance v. Griffin, 784 N.E.2d 448 (Ind. 2003); Stehly v. Davison County, 2011 SD 49, 802 N.W.2d 897 (S.D. 2011).
- <sup>2</sup> Rogers v. DeKalb County Bd. of Tax Assessors, 269 Ga. 31, 495 S.E.2d 33 (1998); Department of Local Government Finance v. Griffin, 784 N.E.2d 448 (Ind. 2003).
- <sup>3</sup> McBreaity v. Commissioner of Administrative and Financial Services, 663 A.2d 50, 102 Ed. Law Rep. 1139 (Me. 1995); Beatty v. State Tax Com'n, 912 S.W.2d 492 (Mo. 1995).
- <sup>4</sup> Griffin v. Department of Local Government Finance, 794 N.E.2d 1171 (Ind. Tax Ct. 2003); Rackliffe v. Northport Village Corp., 1998 ME 114, 711 A.2d 1282 (Me. 1998).
- <sup>5</sup> Jarvill v. City of Eugene, 289 Or. 157, 613 P.2d 1 (1980).  
Neither uniformity requirements nor equal protection guarantees prevent a state from making classifications that result in different state taxes among the various counties as long as those classifications are rationally related to legitimate government purposes. Kottel v. State, 2002 MT 278, 312 Mont. 387, 60 P.3d 403 (2002).
- <sup>6</sup> State ex rel. Atty. Gen. v. Lake Superior Court, 820 N.E.2d 1240 (Ind. 2005).
- <sup>7</sup> Foss v. City of Rochester, 66 N.Y.2d 872, 498 N.Y.S.2d 758, 489 N.E.2d 727 (1985).
- <sup>8</sup> Opinion of the Justices, 469 So. 2d 110, 25 Ed. Law Rep. 741 (Ala. 1985); Foss v. City of Rochester, 65 N.Y.2d 247, 491 N.Y.S.2d 128, 480 N.E.2d 717 (1985).
- <sup>9</sup> Jarvill v. City of Eugene, 289 Or. 157, 613 P.2d 1 (1980).
- <sup>10</sup> 41 Kew Gardens Road Associates v. Tyburski, 70 N.Y.2d 325, 520 N.Y.S.2d 544, 514 N.E.2d 1114 (1987).
- <sup>11</sup> People ex rel. Kutner v. Cullerton, 58 Ill. 2d 266, 319 N.E.2d 55 (1974).

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## 71 Am. Jur. 2d State and Local Taxation § 116

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### State and Local Taxation

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### Part Two. Power to Tax and Constitutional Limitations Thereon

#### VIII. Equality and Uniformity

##### B. Classification and Discrimination, in General

## § 116. Burden of proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1012, 1032, 1040

West's Key Number Digest, [Taxation](#) 🔑 2135, 2723

There is a presumption favoring the validity of classifications made by a legislative body in taxing matters, and a classification must be upheld if the stated facts may reasonably sustain it.<sup>1</sup> Accordingly, the State has no obligation to produce evidence to sustain the rationality of a statutory classification challenged under the Equal Protection Clause,<sup>2</sup> which may properly be based on rational speculation unsupported by evidence or empirical data.<sup>3</sup> It is incumbent upon the parties attacking the constitutionality of properly adopted tax legislation to demonstrate that the classification chosen by the legislature is unreasonable<sup>4</sup> or arbitrary<sup>5</sup> and clearly, palpably, and plainly violates the Constitution.<sup>6</sup> The party attacking the classification must negate every conceivable basis which might support it.<sup>7</sup> To meet this burden, the evidence must demonstrate explicitly that the tax is hostile and oppressive against particular persons and classes.<sup>8</sup> A taxpayer alleging that the administration of a tax violates its rights to be taxed uniformly with others of its class must demonstrate deliberate, purposeful discrimination in the application of the tax before constitutional safeguards are violated.<sup>9</sup> Discrimination need not be deliberate in the sense that disparate treatment is the purpose of the system; rather, the operative action is a discriminatory effect that results from a system rather than simple error or oversight.<sup>10</sup>

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### Footnotes

<sup>1</sup> [Thares v. Brown County Bd. of Equalization](#), 2000 SD 114, 616 N.W.2d 380 (S.D. 2000).

<sup>2</sup> [Jensen v. Franchise Tax Bd.](#), 178 Cal. App. 4th 426, 100 Cal. Rptr. 3d 408 (2d Dist. 2009), review denied, (Jan. 21, 2010).

<sup>3</sup> [Jensen v. Franchise Tax Bd.](#), 178 Cal. App. 4th 426, 100 Cal. Rptr. 3d 408 (2d Dist. 2009), review denied, (Jan. 21,

2010); *Panhandle Producers & Royalty Owners Ass'n v. Oklahoma Tax Com'n*, 2007 OK CIV APP 68, 162 P.3d 960 (Div. 1 2007).

4        *North Georgia Elec. Membership Corp. v. City of Calhoun*, 264 Ga. 769, 450 S.E.2d 410 (1994); *Devlin v. City of Philadelphia*, 580 Pa. 564, 862 A.2d 1234 (2004).

5        *Empress Casino Joliet Corp. v. Giannoulis*, 231 Ill. 2d 62, 324 Ill. Dec. 491, 896 N.E.2d 277 (2008).

6        *Devlin v. City of Philadelphia*, 580 Pa. 564, 862 A.2d 1234 (2004).

7        *California Assn. of Retail Tobacconists v. State of California*, 109 Cal. App. 4th 792, 135 Cal. Rptr. 2d 224 (4th Dist. 2003); *Daimlerchrysler Co., LLC v. Billet*, 51 A.D.3d 1284, 858 N.Y.S.2d 836 (3d Dep't 2008); *Ohio Apt. Assn. v. Levin*, 127 Ohio St. 3d 76, 2010-Ohio-4414, 936 N.E.2d 919 (2010).

8        *Summers Chevrolet, Inc. v. Yell County*, 310 Ark. 1, 832 S.W.2d 486 (1992); *Com., Revenue Cabinet v. Smith*, 875 S.W.2d 873 (Ky. 1994); *New Providence Apartments Co., L.L.C. v. Mayor and Council of Borough of New Providence*, 423 N.J. Super. 210, 31 A.3d 958 (App. Div. 2011).

9        *In re Penn-Delco School Dist.*, 903 A.2d 600, 211 Ed. Law Rep. 953 (Pa. Commw. Ct. 2006).

10       *Beattie v. Allegheny County*, 847 A.2d 185 (Pa. Commw. Ct. 2004), order aff'd, 589 Pa. 113, 907 A.2d 519 (2006).

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## 71 Am. Jur. 2d State and Local Taxation § 117

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### Part Two. Power to Tax and Constitutional Limitations Thereon


#### VIII. Equality and Uniformity

#### B. Classification and Discrimination, in General

## § 117. Remedies for discrimination

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2121, 2128

If a property taxpayer is subjected to an unconstitutional tax, he or she is entitled to a judicial or quasi-judicial remedy.<sup>1</sup> Where an individual taxpayer has demonstrated a lack of uniformity regarding his or her assessment, one appropriate remedy is to reduce the assessment to that consistent with the common level in the district.<sup>2</sup>

A taxing authority found to have imposed an impermissible discriminatory tax retains flexibility in responding to this determination and may correct impermissible discrimination by:

- refunding the difference between the tax the taxpayer paid and the tax that it would have paid had it been assessed in the same manner as others in its class
- retroactively assessing, to an extent consistent with other constitutional restrictions, the members of the taxpayer's class in the manner that the taxpayer had been assessed or
- combining a partial refund to the taxpayer and a partial retroactive assessment to others within the taxpayer's class<sup>3</sup>

When a taxpayer alleges a violation of the uniformity clause of the state constitution, the courts may be permitted to exercise equity jurisdiction despite the existence of a statutory remedy, even though the uniformity challenge does not present a facial constitutional attack, if the taxpayer establishes both discrimination in the application of the taxing statute and that the statutory remedy, if any, is inadequate.<sup>4</sup>

Classifications made by other tax legislation cannot remedy the nonuniformity of a tax statute.<sup>5</sup>

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#### Footnotes

- <sup>1</sup> Tri-Terminal Corp. v. Borough of Edgewater, 68 N.J. 405, 346 A.2d 396 (1975).
- <sup>2</sup> Smith v. Carbon County Bd. of Assessment Appeals, 10 A.3d 393 (Pa. Commw. Ct. 2010), appeal denied, 23 A.3d 1058 (Pa. 2011) and appeal denied, 23 A.3d 1058 (Pa. 2011).
- <sup>3</sup> Tax Appeal of County of Maui v. KM Hawaii Inc., 81 Haw. 248, 915 P.2d 1349 (1996).
- <sup>4</sup> Beattie v. Allegheny County, 847 A.2d 185 (Pa. Commw. Ct. 2004), order aff'd, 589 Pa. 113, 907 A.2d 519 (2006).
- <sup>5</sup> City of Harrisburg v. School Dist. of City of Harrisburg, 551 Pa. 295, 710 A.2d 49, 126 Ed. Law Rep. 252 (1998).

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